SPECIAL NUMBER.


# The Solicitors' Journal

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THE

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### *EXAMINATIONS.*

The Sessions of March, 1929, will consist of Preliminary, Associateship and Final Examinations. Dr. Graham Little, M.D., M.P. for the London University, is the Society's Honorary Director of Educational Studies.

*By order of the Council,*

JOHN STEVENSON,
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# The Solicitors' Journal

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## Current Topics.

### Judicial Salaries and Pensions.

IN AN article contributed to an evening journal Lady OXFORD AND ASQUITH has been contrasting the position, from the pecuniary point of view, of the statesman who is expected on a comparatively small salary to exercise unbounded hospitality, with leaders of the Bar whose incomes may be termed relatively princely, and who are exempt from the obligation of entertaining on the lavish scale which appears to be inseparable from the lot of the Prime Minister and his Cabinet colleagues, who, as a rule, are not rich men. The same paradox, however, is observable throughout the whole of our social system, and it is illustrated in a striking way in contrasting the modest salaries of our High Court judges with the incomes most of them had to relinquish on accepting the judicial office. Those salaries were fixed on their present scale at a time when the cost of living was far below the present level, and so it comes about that a very real sacrifice is made by most of those who leave the Bar for the Bench, although no doubt this is partially compensated by the dignity of the position and by the fact that a pension is payable after fifteen years of active service. At the moment two ex-Lord Chancellors and twelve other judges are drawing these pensions, but not a few of them are still earning these rewards by the work, judicial and other, which they are rendering to the State. Of ex-judges of the Court of Session in Scotland there are six entitled to pensions, including Lord TRAYNER, who retired nearly a quarter of a century ago, and his son-in-law Lord SALVESEN, who sits occasionally on the Judicial Committee of the Privy Council. Two ex-judges, namely, Viscount FINLAY and Lord STRATHCLYDE (a former Lord President of the Court of Session), being possessed of ample private means, renounced, with great public spirit, any claim to a pension; and it may be recalled that Lord LOREBURN, in the stressful war years, was content to draw half only of the pension to which as an ex-Lord Chancellor he was entitled. The country has reason to be proud of her judges who serve her so well, oftentimes at very considerable self-sacrifice.

### The Solicitors Bill.

BOTH BRANCHES of the legal profession, we venture to think, will welcome the passage into law of the Solicitors Bill, which has passed through all its stages in the Commons without amendment. The Bill is intended to remedy certain abuses to which the solicitor's profession has hitherto been open. It is a matter of common knowledge that devices were available to solicitors who were suspended or struck off the rolls, virtually to flout the authority of The Law Society by disposing of their practices in some cases to "dummy" solicitors to whom they engaged themselves as managing clerks, or in some other subordinate position. The Solicitors Bill is intended to remedy these abuses, but at the same time it very wisely does not go so far as to shut the door of employment entirely to persons who happen to be in the unhappy position of having been suspended or struck off. Under the Bill no solicitor may, without the written permission of The Law Society, engage in connexion with his practice, a person who to his knowledge has been suspended or struck off (s. 1 (1)), unless the solicitor in question happens to have been struck off at his own request (s. 1 (5)). The permission to employ such person if given may be for a specified term, and it may be subject to terms and conditions imposed by The Law Society (s. 1 (2)). An appeal against the refusal of The Law Society to give the necessary permission, or against the length of the term for which, or the terms and conditions on which the permission may be granted, lying to the Master of the Rolls (s. 1 (3)). Any solicitor who acts contrary to the provisions of the above section, either by employing such a person without the necessary permission or by failing to observe the terms and conditions on which the permission may have been granted will make himself liable to have disciplinary action taken against him at the instance of The Law Society (1 (4)). The Bill furthermore imposes liabilities upon the solicitor who has been struck off or suspended, and who is seeking employment with a solicitor in the way of his profession. If such a solicitor accepts or even seeks such employment without previously informing his prospective employer that he has been struck off or suspended, he will be guilty of a summary offence punishable by a fine not exceeding £10 for each offence (s. 2 (1)). No proceedings however may be commenced against him except by or with the consent of the Attorney-General (s. 2 (2)). The statutory limitation of time (six months) in respect of summary offences in general will not strictly apply in such cases, it being open to the prosecutor to take proceedings at any time before the expiration of six months after the first discovery of the offence by him.

### Humour at the "Savidge" Inquiry.

SOME PLEASING incidents during the hearing of this interesting case ought not to pass into oblivion. They can be regarded here without the slightest malice and with no comment involving contempt of court. Even the gravest matters fortunately have a lighter side. The first occasion of mirth arose in the masterly cross-examination of Chief Inspector COLLINS by Sir PATRICK HASTINGS. The witness's fine police record elicited by Mr. BIRKETT at the opening of his examination-in-chief included his having been engaged in a number of important murder cases, and Sir PATRICK, after reminding the witness of this fact, asked him whether it was not also the fact that in each of these cases a long voluntary

statement had been made by the accused. The embarrassment of the witness showed that the implication was not lost on him. Another little episode made everyone present laugh, from the chairman of the tribunal downwards. The Director of Public Prosecutions was reading the record of some telephone messages which passed between Miss SAVIDGE'S solicitors and Chief Inspector COLLINS. He read the solicitor's words in a determined and provocative tone; then coming to the police reply, his voice became soft and full of gentle politeness. The abrupt contrast was too much for the gravity of his audience. One at least remembered the story of a prodigal son who wrote home to his father for assistance. The father could not read, and got the village blacksmith to read the letter to him; result, a refusal to assist the bullying young scamp. Desiring to hear the letter again, the father got a meek little cobbler with a weary little voice to read it. Hearing his son's pathetic appeal led to an immediate remittance. The third occasion of laughter arose during Miss EGAN'S cross-examination as to how Sir LEO MONEY got to know of the police interrogation. Mr. BIRKETT asked her if she rang up Sir LEO after the police had been to her. "No!" Did anyone do so on her behalf? "No." "Did he call that night?" "No." "Did anyone go round to see him?" "No." "How did he know?" "My brother rang him up before the police came." Mr. BIRKETT, who had been growing gradually more nonplussed by the answers he was getting, ejaculated: "Oh, I didn't think of that," and had to join in the laugh against himself which followed.

### Police as Advocates.

A DAILY paper reports a case in which two lads were bound over for stealing a motor car, and adds that the Chief Constable said that, in view of the number of car robberies reported locally, he would in future press for severe penalties. This, if a correct report, is not pleasant reading. Unless the Chief Constable was the prosecutor, which is unlikely, though possible, he had no more right to offer his remarks than anyone else present in court. If he was the prosecutor, he was entitled to the same rights of address as any other prosecutor in person, and no more. Very rarely does counsel or solicitor think proper to press for severe penalties; he usually confines himself to saying, at the most, that in his submission the case discloses a serious offence, or to informing the court that this kind of offence has become prevalent. It is, after all, for the bench alone to judge whether the punishment should be severe or not. Police advocacy has been strongly criticised on occasion in the High Court. It behoves police officers to avoid, what most of them certainly do not intend, an appearance of taking sides or of having some influence over the bench. Their duty is to bring offenders before the court, and, sometimes, to conduct the prosecution. In any event it is well that they should show no undue anxiety as to the result, especially as to the degree of punishment. Moreover, the prevalence of an offence does not necessarily involve the consequence that it must be visited with severity. It is well to ascertain its cause. Unemployment, poverty, sometimes even faulty police methods, may be contributing factors. Merely to assume that severity will put down any kind of crime, without considering how it has become prevalent, shows some want of insight.

### "Permitting" in Motor-Car Offences.

A METROPOLITAN magistrate last week had to decide a point which is not often contested, but which presents some little difficulty when, as in this instance, it was capably argued by counsel for the defence. The defendant company was summoned for permitting a motor car to be used which did not fulfil the requirements of the regulations as to brakes. One brake was admittedly defective when the police stopped the car; but it was sought to show that the company had taken all reasonable steps to see that all cars went out in proper condition, that they did not know of the defect when the car went out, that the defect did not exist when it went out, and that therefore the company had not "permitted" the car to be used contrary to the regulations. "Permitting" generally involves knowledge, actual or constructive, by a person or his agent, though some of the licensing cases have shown that the law will not lightly release a man from his responsibilities for want of affirmative evidence of actual knowledge. Here, however, the short point is: What must the prosecution prove that the defendant permitted? Must it be shown (*a*) that the defendant permitted the car to be used, and (*b*) that he knew or should reasonably have known of its defective condition? or is it enough to show (*a*) that the car was being used in a defective state, and (*b*) that the defendant permitted its use? The learned magistrate apparently took the second view, and he fined the company, not being satisfied that the evidence for the defence went far enough. We think his view would be upheld. The absolute prohibition contained in the opening words of Art. II of the Motor Cars (Use and Construction) Order, 1904, seems to support it. The defendant permits a car to go out; if subsequently it is found to be infringing the terms of the article, he is liable unless, as we submit, he can show definitely that the matter complained of arose after the car came out, and was due to a cause which he could not have foreseen, such as an accident or a latent defect. And, of course, if the car be taken out contrary to his orders, or without his authority, express or implied, he has "permitted" nothing, and is entitled to be acquitted.

### Indian Income Tax.

AN IMPORTANT amendment of procedure in the case of Indian income tax repayment claims took effect as from 1st April, 1928. Total income for this purpose has been restricted, in the case of a person not resident in India, to the amount of his Indian income, but now, under s. 48 of the Indian Income Tax Act, total income is to include not only Indian income, but all income wheresoever it may arise or be received. The effect of this alteration will be evident, and it will mean that many persons who have previously been in a position to submit repayment claims will no longer be able to do so owing to the change in the method of computation of their Indian rate of income tax.

### Super-Tax and Sur-Tax.

THE CONTROVERSY on the effect of the change from super-tax to sur-tax has been settled by the admission of the Chancellor of the Exchequer that the Revenue is to benefit to the tune of about one million sterling in a full year. It will be remembered that super-tax is to be levied, for the last time, in 1928-29 and that this will be based on the statutory income of 1927-28. For the same year, 1928-29, sur-tax is to be levied on the actual statutory income of the year. It will be seen, therefore, that an additional year's burden is thrown on the taxpayer. For instance, if a taxpayer dies on 30th June, 1929, he will have been assessed for 1928-29 to super-tax, payable on 1st January, 1929, and to sur-tax for the same year, payable on 1st January, 1930. In addition to this liability his estate will be called upon to pay sur-tax, on 1st January, 1931, on the proportion of his income from 6th April, 1929 to the date of death. When regarding the provisions of the Finance Bill, 1927, it is clear that Parliament did not realise that, in passing the "simplification" scheme in connexion with super-tax, it was imposing an additional duty on one section of the taxpaying community. It is hoped that the matter will be pressed in the House of Commons for Mr. CHURCHILL'S attempt to justify the extraction of the additional £1,000,000 on the ground that the change of basis of Sched. E will cost the Exchequer at least this amount cannot be accepted by those who consider that an additional impost must be made openly and not under the cloak of simplification.

## The "Dreamland" Accident.

THE UNFORTUNATE mishap to the flying boat at "Dreamland," Margate, will naturally suggest consideration of the law applicable to accidents at fairs and similar places of amusement. An entrance fee may or may not be payable, but, whether so or not, the public is invited to pay to participate in further amusements, many of them indeed based on an appearance of danger, such as the "Helter-Skelter," involving a devious toboggan-run from a considerable height. The aim no doubt is to produce the thrill and appearance of danger without its reality. The balance of centripetal and centrifugal forces must render the flying boat a very safe contrivance. That balance, however, was most unluckily disturbed at Margate by the breaking of a stay or bolt, nullifying the pull of the passengers' bodies towards the centre of the circle. In consequence, they were flung from the circumference, two being killed and others seriously injured. The first question which arises in such cases is whether the defect in the machine has arisen from a pure accident, against which no one could have guarded, or someone's negligence. On this issue the case was referred back to the county court in *Cox* v. *Coulson*, 1916, 2 K.B. 177. In the event of pure accident for which no one is to blame, it would appear no one is liable: see *Readhead* v. *The M.R. Co.*, 1869, L.R. 4 Q.B. 379, and *Stanley* v. *Powell*, 1891, 1 Q.B. 86—the latter decision going to the extreme verge of the doctrine, which has previously been discussed in these columns. The position in the case of negligence is discussed in *Sheehan* v. *Dreamland, Margate, Ltd.*, 1923, 40 T.L.R. 155, where the accident befell in the use of a contrivance known as the "Luna Ball." The defendants there escaped liability because there was no evidence of intrinsic danger, and the person by whose negligence the accident occurred was not their servant. The general position of the public in such fairs *vis-a-vis* the proprietors appears to be that of invitee and invitor. By s. 38 of the P.H. (Am.) A., 1890 (which is adoptive) "An urban authority may make bye-laws for the prevention of danger from whirligigs and swings when such whirligigs and swings are driven by steam power, and from the use of fire-arms in shooting-ranges and galleries." It was held, however, in Ireland, that a bye-law requiring wayfarers along a high-road to be protected by a 14-inch stone wall from possible human projectiles from whirligigs and swings situated not less than twenty yards away from the road, was, on the whole, excessive: see *Enniscorthy U.D.C.* v. *Field*, I.R., 1904, 2 K.B.D. 518.

## How History is Made.

DAILY PAPERS which have survived the chances and changes of a century give us daily excerpts from their issues of a hundred years ago. They are particularly fond of telling us of happenings at Bow Street police court, or, as it was then, Bow Street police office. For the 16th of June, 1828, we have an amusing little history of a deaf gentleman who charged a hackney coachman with stealing sixteen sovereigns (they had golden coins in those days!). He seems to have been hasty in the matter, for he was unable to offer any evidence against the prisoner. Told to go, the old gentleman turned and put on his hat. The magistrate ordered him to remove it, but the old gentleman, being deaf, missed his cue. The irate magistrate (let his name go down as Mr. Halls) "in a considerable rage" said to a police officer, "Knock off his hat; we'll teach him to respect the bench."

Here the accounts part company. The press of 1828 was as inaccurate as the press of 1928 can be, and, as we doubt not, the press, or whatever may be its then equivalent, will be in 2028. The *Evening Standard* reports that "the hat fell among the solicitors present"; *The Times* says the officer "made a blow at Mr. Birley's hat, but missed it. Mr. Birley by this time had reached the steps leading into the yard outside of the justice-room, when the officer repeated his blow, and Mr. Birley and his hat rolled down the steps into the yard." Mr. Birley, Mr. Halls and the officer have all passed away a long time ago, their official dignity and outraged feelings troubling no man any more. But this is human testimony, the material upon which juries give verdicts, and history becomes philosophy teaching by experience! It is not surprising that a witness before the Street Offences Committee said, speaking after many years in the courts, "I have not a great respect for human testimony at large." "You have seen too much of it?" "Yes." "But it is the only thing we have?" "Yes."

## Costs in Rent Restriction Cases.

IN THE case of *Branch* v. *Bennett's Dairies, Ltd.*, before Mr. Justice MACKINNON, on the 12th inst., the plaintiffs claimed possession of certain premises subject to the Rent Restriction Acts on the ground that the defendants' breaches of the covenants contained in the lease disentitled them to a renewal of the lease as provided by its terms. His lordship was of opinion that the breaches were sufficient to justify the plaintiffs refusing a renewal and resuming possession, and gave judgment accordingly. Counsel for the defendants thereupon submitted that as the action was one which could have been brought in the county court, the plaintiffs were not entitled to costs. The plaintiffs' counsel contended that although the rent of the premises in question brought them within the Rent Restriction Acts, the provisions of those Acts were not necessarily applicable to a dispute of the present nature, which was not one "arising out of" the Acts within the meaning of s. 17, sub-s. (2) of the Act of 1920. Mr. Justice MACKINNON said, that although the dispute was purely on a commercial question and not on a point arising under the Acts, he was, nevertheless, bound by authority to refuse the plaintiffs their costs. The binding authority was *Russoff* v. *Lipovitch*, 69 SOL. J., 276, 1925, 1 K.B. 628, where the Court of Appeal reversed the decision of Mr. Justice MCCARDIE reversing the order of a master remitting to the county court an action in which the plaintiffs sought to recover possession of a house which the tenant held over under the provisions of the Rent Restriction Acts, and the rent of which was more than £100 per annum. Lord Justice BANKES, in his judgment, said: ". . . the legislature is treating *any action* (the italics are the writer's) by a landlord to recover premises to which the Act applies as a proceeding arising out of the Act, although it is quite true that, strictly speaking, the right of recovery is independent of the statute, the landlord being entitled to bring an action of ejectment at common law." It was held that the action was within the jurisdiction of the county court, although the rent was in excess of £100 a year, from which it followed that had the plaintiff brought the action in the High Court he would have been disallowed his costs on that scale.

In the case of *Gunter* v. *Davis*, 1925, 1 K.B. 124, Mr. Justice MCCARDIE found that the defendant, from whom possession of premises within the Rent Acts was sought, had never had a tenancy, that he was a trespasser, and held that a claim for possession against a trespasser was not one "arising out of" the Act of 1920 within the meaning of s. 17, sub-s. (2), and allowed the successful plaintiff his costs. Referring to this case ATKIN, L.J. (as he then was), in *Russoff* v. *Lipovitch*, *supra*, said that he proposed to reserve consideration of the question whether proceedings against a mere trespasser, who had never filled the position of tenant or sub-tenant, for the recovery of possession of a house to which the Act applied were proceedings arising out of the Act. Mr. Justice MACKINNON, in the present case, said that the position as to costs was very unsatisfactory, and gave leave to appeal, counsel for the plaintiffs intimating that on this question of costs the case might go as far as the House of Lords. If *all actions* to recover possession of premises, subject to the Rent Restriction Acts, are to be deemed to be proceedings arising out of the Act, so as to disentitle the plaintiff to High Court costs, an inequitable restriction on the plaintiffs' common law rights must occasionally result, a state of affairs which clearly calls for some remedy.

# The Organisation of a Solicitor's Office.

I.

THIS is a wide and far-reaching subject, which demands consideration from diverse points of view—dependent mainly upon the size and nature ot the particular office concerned. As regards the really large office, this must usually be organised into water-tight compartments, with specialists in charge of each. The quantum of work to be undertaken by each particular department is so great as to demand independence of the other portions of the office, and it is not proposed, therefore, to approach the matter from the point of view of the big office.

On the other hand, no useful purpose would be served by considering the inner working of the very small concern, which consists of the practitioner, one general clerk (combining limited ability in the direction of shorthand, typewriting, drafting, etc.), and an office boy. In such cases the solicitor himself has inevitably to undertake many responsibilities which would otherwise not be necessary or desirable, and the various suggestions submitted in these articles are intended to apply to—what might be termed—the medium office, consisting either of a single practitioner or two or more solicitors in partnership.

For the purpose of convenience, the particular subjects with respect to which advise is tendered are indicated by a side heading, and it is hoped that some of the following suggestions will be of assistance, both in the case of the big office and also as regards the solicitor whose practice has hitherto only reached small dimensions.

*Staff.*

It savours of a platitude to emphasise that the staff should be kept as low as possible—consistent with efficiency. It is not always realised, however, that it is usually better—and in the long run more economical—to have two good clerks, whatever the nature of their work, rather than three mediocre ones. Indeed, one of the most fruitful sources of waste and loss of time is the clerk who is constitutionally or temperamentally slow, or who is not possessed of "push." It may be advisable, however, to deal specifically with one or two kinds of clerk.

*Shorthand Writers.*

The busy solicitor of to-day can only keep pace with an active and vigorous practice by means of continuous and detailed dictation. When selecting a shorthand writer who is emphatic as to his or her ability to indulge in stenographic gyrations at the rate of 120 words a minute, take care to observe the speed at which the shorthand is reproduced. In all too many cases shorthand is taken down at a reasonable speed in such an indifferent outline as to result in slow and tedious reproduction, particularly when the subject-matter does not facilitate reading by context. It is remarkable what a great deal ot work can be turned out by a solicitor to-day if he can ring the changes on two or three first-class shorthand writers, who can be relied upon to type their work quickly. As a general rule it will be found that two really good shorthand writers at £3 each are infinitely better than three at £2 10s., £2 and £1 10s. respectively.

*General Clerks.*

Really first-class clerks are the mainstay of a modern office. It is very advisable that they should be able to write shorthand, though they should not be utilised unnecessarily for straightforward or routine dictation.

It is important, however, to ensure that the general clerk should be accustomed to tackle as wide a range of subjects as possible, as one of the most uneconomical propositions from a clerical point of view is the young man, who—whilst prepared to carry out conveyancing, trusts and a certain amount of bookkeeping or accountancy work—regards a suggestion that he should make himself efficient as regards the issue of straightforward County Court summonses or a certain amount of elementary Workmen's Compensation as unreasonable and extravagant. If, however, he is to be equal to a wide range of responsibilities, a good general education is essential, and it is not necessary to enlarge at length upon the importance of personality.

*Manager.*

Even in a comparatively small office, everything should be done to emphasise the responsibilities and powers of supervision of the senior clerk, or whoever is deputed to act as manager. Even where two older clerks are of the same general seniority, it is advisable, whenever possible, to make one of them the manager and responsible, as the senior in the office, for the general control and supervision of affairs.

One of the most difficult things in practice is to create a system of consecutive responsibility so as to ensure that the junior members of the staff are prepared to accept instructions and take work from those above them. A tremendous amount of time is wasted in many offices because of the lack of co-ordination in this respect, which results in work being held up in certain quarters when there is ample time and opportunity for other members of the staff to assist and relieve the pressure.

*Departments.*

Sufficient has already been said to emphasise the importance of elasticity. It is inevitable, of course, that from a staff point of view, conveyancing and its subsidiary matters should be kept distinct from litigious work, but if the water-tight compartment principle is introduced to any appreciable degree in a small office, satisfactory organisation becomes very difficult in times of abnormal pressure of work or whenever there is a depletion through illness or holidays.

After all, if it is reasonable to expect an articled clerk to become cognisant with the general principles of the important branches of law within three years, it should not be unreasonable to require an intelligent clerk to accept limited responsibility for matters of diverse kinds, even though they may cover a somewhat wide range.

It is necessary, however, that the book-keeping of the office should be kept in the hands of the cashier, though it is advisable to have a second "string" available, who is sufficiently *au fait* with the books and work generally, to step into the breach when necessary.

*Office Hours.*

The writer recalls an idea which was current in his younger days, which suggested that an hour's "beauty" sleep before midnight was of much greater relative value than at any other time of the night. He cannot claim to have had much experience of sleep of this nature, but he is convinced that one of the best investments—from an efficiency and economic point of view—is to get to the office as soon after 9 o'clock as possible. An hour's work prior to 10.15 is often equivalent to twice as long later in the day, as it is relatively free from interruptions and enables a substantial portion of the routine correspondence to be dictated before the telephone begins to be active or clients enter the office.

Numerous offices have to keep their staff until 6.15 or 6.30 in the evening, which would be unnecessary if an earlier start were made, and it is surprising what a great deal of waste time occurs during the early part of the day. If, however, a reasonable quantum of work is to be got out of the staff between 9.15 and 10.15 in the morning, it is essential that the principal or his manager be present himself.

*Overtime.*

Speaking generally, overtime should rarely be necessary, and the increasing extent to which women and girls are absorbed into offices demands more than ever that overtime should be reduced to a minimum.

If a staff is reasonably treated and the general "atmosphere" a congenial one, difficulties as regards occasional overtime will rarely arise, but it is submitted that, if it is necessary for any clerks to come back in the evening, or to stay unduly late with any degree of regularity, extra remuneration should be willingly and genially paid.

"*Give and Take.*"

No apology is advanced for allocating a special paragraph in order to focus attention upon the important principle of "give and take."

A member of the legal profession should constitute one of the best and most fair-minded of employers. His training and aptitude for weighing pros and cons and seeing the other person's point of view should make it easy for him to realise the claims and rights of his staff, not only with respect to remuneration, but also as regards off-time and holidays.

Many practitioners overlook the fact that their most experienced clerks put in an appreciable amount of extra time during the year, and never think of packing one of them off occasionally for an extra week-end's holiday or offering that extra day or half-day which means so much to the subordinate.

So far as salaries are concerned, it should not be necessary for a good clerk to have to appeal apologetically for small and obvious increases of wages, nor should he be made to feel that a request for a few hours off-time is an extraordinary or startling proposal. Indeed, practitioners would be well advised to make a point of taking a direct and personal interest in the hobbies, pleasures and activities generally of their staff, as nothing encourages a young clerk, who may happen to be keen on cricket, tennis, or football, more than to be told unexpectedly that he can have a few hours off for a match or tournament.

*Letters.*

No particular point arises as regards the dictation of letters, the main questions being as to the procedure with respect to copying and duplicates. There are various methods: (1) To type or write a letter and press-copy it in a letter book; (2) to type a letter in duplicate or triplicate and file one of the copies away in a loose-leaf letter book; (3) a combination of the above, whereby the original is fair-copied directly into a bound letter book and a duplicate put with the papers.

Possibly the last is the best method, inasmuch as a press copy in a letter book is an exact duplicate of the original, including the signature and any amendments, whereas the carbon copy is usually merely initialed.

In practice, however, a great deal of time is saved if press copying can be obviated, and, apart from the difficulty which may occasionally arise with certain judges with respect to the accuracy and authenticity of copy letters, there is much to commend the typing of letters in triplicate—the original to be posted, the first duplicate to be permanently filed in a loose leaf book, and the second to be placed with the relevant bundle of papers.

Whatever the system, however, it is desired to lay stress upon the value of an extra copy of all correspondence being typed and kept with the papers in all cases. This obviates reference to the letter book, and enables a complete record of the entire matter to be kept with the papers.

So far as the signing of letters is concerned, there are obvious advantages in the principal concerned signing all letters relating to matters within his general supervision, even though they may have been dictated or written by one of his staff. The signing of purely routine letters in a busy office, however, takes a considerable amount of time, and the extent to which this responsibility can be delegated depends upon the experience and reliability of the subordinates concerned, though the practice of letters being signed indiscriminately by junior members of the staff is to be deprecated.

The necessity for a reference number or letters being typed upon the letter depends upon the size of the office and the number of principals or chief clerks who deal directly with matters. If, however, a reference can be obviated it is better from the point of view of the other side.

As regards the opening of letters, it is important that this should be confined solely to the principal or his manager as far as possible, though there is, of course, no objection to the letters being opened by a subordinate so long as the principal or manager is present. An exception to this general rule sometimes arises in the case of a personal or confidential clerk or one of the principals.

The keeping of a postage book is a comparatively simple matter, but it is essential that all letters should be entered up by one of the juniors each night and the postage inserted, and a separate book should be kept for registered letters, so as to enable the receipts to be retained.

It should not be forgotten, however, that when proving, e.g., the service of a notice to quit by registered letter, it is not technically sufficient merely to produce the registered receipt, which in itself merely confirms the posting of an envelope, and is not direct evidence that there was anything inside it; so that the clerk concerned should be instructed to make a memorandum in the registered letter book recording the insertion of the particular papers concerned in the envelope and its sealing.

*Drafting Papers.*

In an average office there are not, apart from the principals or the manager, more than one or two clerks who are able to draft documents on their own initiative. Moreover, these have frequently many other routine duties to perform, and there is nothing more calculated to ensure expedition than the ability of the solicitor concerned to dictate all drafts direct. This method has the advantage of enabling the practitioner to keep his eye on one or two books of precedents and also an abstract of title and other papers, and the old custom of drafting in longhand has little to-day to commend it—though, when dictating important documents, it is sometimes advisable to write out independently any specially difficult or intricate clauses.

*Standard Drafts.*

Many offices make a point of having standard forms of mortgage printed. This saves a considerable amount of time, though this result can be obtained by the simple expedient of duplicating drafts within the office. It is not always advisable to attempt to standardise drafts of conveyances or tenancy agreements.

*Engrossing.*

Nothing can be quite so satisfactory as the written engrossment in permanent ink. Skins are rarely used nowadays owing to the expense involved, and good qualities of strong engrossing paper can be obtained from any of the law stationers.

The typewriting of engrossments saves a great deal of time, and, if a permanent black ribbon is used, is reasonably satisfactory. It has also the advantage of enabling a carbon copy to be made at the time and retained with the papers.

Engrossing of this nature should, however, only be undertaken by a really first-class typist, owing to the importance of there being no mistakes or erasures. This is particularly so in the case of wills.

*Conveyancing, Trusts and Probate.*

From an organisation point of view, it is usually necessary to group these together, and, if the practice be large enough, they should be undertaken by different members of the staff from those who deal with litigation and other matters. The use of carbon copies in connexion with conveyancing is now generally endorsed, and it is recommended that all wills should be typed in triplicate—the first copy being sent to the client (if he desires the solicitor to retain the original) and the other kept in a separate alphabetical file independently of the original wills, which should be retained in a suitable safe or fire-proof receptacle.

As regards trusts and probate work generally, there is much to commend the senior clerk concerned having had accountancy and book-keeping experience, both by means of evening classes and practical work.

*Litigation.*

The general principles propounded in these articles apply to the department in an office which deals with litigious matters.

*Costs.*

Only the larger offices can afford the luxury of an independent costs clerk, and the majority of solicitors must organise this important branch of their work upon a more general basis. Perhaps the ideal method is for the principals or chief clerks concerned to dictate to one of the shorthand writers all the attendances, letters and other matters which could be embodied in the bill, and the resultant memorandum can be retained for the time being with the respective papers.

This, however, takes a considerable amount of time and raises the important question as to whether the old method of sending in bills of costs on a detailed item-by-item basis should be continued as regards the average matter, though it is realised, of course, that in the case of important trusts and certain other special matters it may be necessary for the costs to be prepared and submitted in detail.

The writer is of opinion that, as a general rule, this method is not so satisfactory as the submission of a short précis of the work done and the making of an aggregate inclusive charge. The latter will, of course, have relation to the quantum of work involved, but, if the suggestion as to the placing with the papers of a carbon copy of all letters is acted upon, an adequate record of the matter is always available and can be readily dictated, as the copy correspondence—coupled with entries in the diary—will enable nearly all the attendances to be readily dictated if a full bill is required.

To take, e.g., the proving of a will and the submission of an account to the executors. If the latter receive a memorandum embodying in detail every attendance and every letter—whether the same be important or trifling—they naturally get the impression that heavy expenditure is being chalked up against them every time they have a word with their solicitor, however brief or casual it may be. This impression is not entirely eliminated by the substitution of an aggregate inclusive figure after the detailed work has been set out, and the writer's experience prompts him to recommend the reduction of long and detailed bills of costs to an absolute minimum. Clients are, of course, entitled to full particulars of the legal costs submitted to them if they so desire, but only on very rare occasions are they asked for, whilst it is a comparatively simple matter to dictate them from the papers if required.

*(To be continued.)*

# The Legal Danger of Lending a Motor-Car.

THE following Article is reprinted from, and by the kind permission of the Editor of, *The Scots Law Times*:—

Recent developments in the law affecting the responsibility of those who own and lend motor cars have been so striking that it may be worth while for the practitioner to give brief consideration to the position which has been created. In a number of cases it is easy to see that, in accordance with ordinary legal principles, the position of A when B is driving his (A's) car is one of unqualified responsibility in law. That, for example, is the case where B is A's servant and is driving the car on the business of A. In accordance with well-known principles, that responsibility ends where the driving takes place outside the ordinary course of B's employment, or where B is not acting or purporting to act on behalf of A. But this proposition is one more easily stated than applied, and it is often extremely difficult to decide whether a given case is one of wrongful acting within the scope of authority, or acting wholly outside of authority.

The present purpose, however, is to deal, not with such cases, but with cases in which no formal relation of master and servant or principal and agent exists between the parties, but in which the decisions turn on the question of control. That question has, of course, arisen in cases where *prima facie* the legal liability is in a person who stands in the formal relation of master to an erring servant. A well-known professor of Scots law annually delighted his class by putting the case of the cab driver whose negligent driving usually rendered his master liable, but which, on the other hand, rendered his fare liable if the fare on jumping in instructed him to "drive like hell to the Waverley Station." In other words, the fare controlled the driver and ousted the liability of the regular employer, who did not employ the cab driver to drive on the principles urged by the fare. But for the moment we are concerned with cases in which a formal relationship involving a general liability of one for the acts of another is not in question. In 1837 the case of *Wheatley* v. *Patrick*, 2 M. & W. 650, was decided. In that case A borrowed a vehicle and horse of B and went out driving with X, whom he allowed to drive. An accident occurred and the injured party sued A. It was held that an action would lie against A. He, it was said, was present and had the control, and that was equivalent to actually driving. From the report it would not appear that the case was very adequately argued, and an opposite result might quite as well have been arrived at in the circumstances. The relationship between the two parties was purely social, not legal nor formal, and it is only in a very loose sense that one could be said to control the other. At least, however, it can be said that the parties sat in the same vehicle.

The judgments in *Wheatley* v. *Patrick*, short and unconvincing as they may seem, found favour with the Privy Council in *Samson* v. *Aitchison*, 1912, A.C. 844. There a person called Mrs. Collins was minded to buy a car, and she with her son and the proposed seller went for a run to test the car's hill-climbing powers. The son drove and had an accident, and the injured person sued the owner and succeeded. He succeeded on the ground that control remained in the owner. In the Court of Appeal of New Zealand, the Chief Justice (that distinguished lawyer, Stout, C.J.) dissented, on the ground that, in the circumstances, to hold the owner to have control was going beyond what had been anywhere decided. And apart from precedents it might have been argued with justice that, *if* the seller in such a case, viz., of a test, surrendered the wheel to the prospective buyer, that must spell surrender of control, as a test carried out by a controlled driver is not calculated to yield that driver a proper notion of the capabilities of the car. However, the Privy Council held that the owner had control of the vehicle and was liable for the negligence of the driver. In *Reichardt* v. *Shard*, 31 T.L.R. 24, it was held that when a young man took out his father's car, which his father allowed him to do, the father was liable for an accident caused by his son's negligence, because he always insisted that his chauffeur should accompany his son, and this was tantamount to an exercise of control. The case of *Pratt* v. *Patrick*, 1924, 1 K.B. 488, does not greatly advance the matter. Following *Samson's Case*, the judge held that a man who by a "casual delegation" entrusted the management of his car to a friend, though himself riding in the car, was not to be taken to have renounced control over the car, and was liable for an accident caused by the driver's negligence. And with this may be compared the recent and not dissimilar Scottish case of *Elliot* v. *Beattie*, 1926, S.L.T. 588, from which it appears that the same principles are applied in Scotland and in England. And *Samson* v. *Aitchison*, *supra*, was cited with approval in the still more recent case of *Fulton's Tutor* v. *Mason*, 1927, S.L.T. 428.

In the Irish case of *Thompson* v. *Reynolds*, 1926, N.I. 131, the court carefully considered the evidence of agency, and

came to the conclusion that the defendant really was the principal of the person whose negligence had caused a collision. If the extraordinary decision in *Parker* v. *Miller* (to be mentioned later) is sound, it is simply so much waste of time for a court to consider such a question, since, apparently, the merely lending a car is sufficient to saddle the owner with liability.

In *Parker* v. *Miller*, 42 T.L.R. 408, will be found a judgment which it is to be hoped marks the extreme limit to which the liability of the owner of a chattel can be pushed for damage done by that chattel. The facts were that Miller frequently allowed a friend, Lappin, to drive his car. On one occasion Miller got out of his car and left Lappin to drive the car to Lappin's house, which he did. There the car was negligently left by Lappin on a steep slope. It ran down the slope and did damage, and for this damage it was held (in a county court) that Miller was responsible. The Divisional Court finding (very justifiably as it would seem) that the judge had not sufficiently directed his mind to the question of the relationship of principal and agent, ordered a new trial, but the Court of Appeal reversed this decision. They proceeded upon *Samson* v. *Aitchison*, *supra*. Lord Justice SCRUTTON (according to the only available report) is reported as saying: "The test of agency in cases of negligence had, every since *Quarman* v. *Burnett*, been not physical control but the right to control." Presumably what the Lord Justice meant (or, *pace* the reporter, said) was that ever since *Quarman* v. *Burnett* the test of liability had been the right to control the operative or driver and not actual physical accompaniment of the driver. If he did not mean this, it is not easy to see what he meant. Hence, in the case under discussion, the physical absence of Miller, the owner, did not oust his liability. Once this principle is clear, it is obvious that there are no limits to the liability of persons who lend their motor cars, because, in one sense, the right to control never leaves them. It will not be possible to base any distinction on the distance from its owner at which the car is to be driven or the length of time for which it is lent. The control of the car was as much an impossibility to Miller a mile off in the same town as if it had been in France; but, because he had the right to control it, he is liable to one who stands towards him in no relationship such as master and servant, but is a simple gratuitous bailee of a chattel. Lenders of cars in future will have to stipulate for a nominal hire, so that the bailee may have, during the loan, the say as to how and where the car shall be driven, and so that the owner may no longer be possessed of this expensive right of control.

Lastly, consider the very recent case of *Britt* v. *Galmoye and Nevill*, 44 T.L.R. 294, which it is difficult to reconcile with the foregoing decisions. Galmoye lent his servant, Nevill, his car, and Nevill collided with and injured Britt. In an action by Britt against both Galmoye and Nevill, it was held by SHEARMAN, J., that Galmoye was under no liability. The relationship of master and servant was not in question as the car was lent for Nevill's own purposes; and upon the question of control the judge said he could find no remnant of control, for *control meant that the journey was the journey of the principal*. Does not this adequately meet the point based on *Quarman* v. *Burnett* put by Lord Justice SCRUTTON? This was a journey purely for the pleasure of Nevill as friend and not as servant. In such a case any journey would be on Nevill's own account, and therefore, for the time being, the control of the owner had ceased. Nobody questions that he may resume control; but to say that that right is one which, like the right of a master who is profiting by a journey, should carry responsibility for the conduct of the driver, is surely to lose sight of the principle upon which is based the liability of one person for the negligence of another.

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The Lord Chancellor has appointed Mr. MAURICE NATHANIEL DRUCQUER, M.A., LL.B., Barrister-at-Law, to be the Judge of the County Courts on Circuit No. 23 (Coventry, Northampton, etc.). Mr. Drucquer was called to the Bar in 1904.

# The Acquisition of Land (Assessment of Compensation) Act, 1919.

By R. C. MAXWELL, O.B.E., B.A., LL.D. (Barrister-at-Law).

THIS Act was the outcome of recommendations made by the Committee on the Acquisition and Valuation of Land for Public Purposes, which was appointed during the dark days of the war by the Minister of Reconstruction, and has had a far-reaching effect in reducing the amount of compensation payable by public authorities in connexion with the purchase of land for public purposes, even where the purchase is not effected under any compulsory powers.

The Act applies where land is authorised to be acquired compulsorily by any Government Department, or any local or public authority (s. 1 (1)), the expression "public authority" being defined as "any body of persons not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water, or other undertaking" (s. 12 (2)). In *Metropolitan Water Board* v. *Berton*, 1921, 1 Ch. 299, it was held that the water board was a "public authority" within the above definition. It was contended in that case that the board was a body of persons trading for profit, because its aim necessarily was to secure that its income should be such as to enable it to pay not merely the trading expenses, but also the interest on debentures issued by the board, and to satisfy its statutory obligations with reference to the sinking fund. Any surplus over trading expenses, it was argued, is profit. "It appears to me," said PETERSON, J., in his judgment, "on the plain sense of this section [i.e., 12 (2)] that what the Legislature meant to do was to draw a distinction between a body of persons, such as an ordinary railway company, which trades for profit, and a body of persons who are unlike a railway company, inasmuch as they do not trade for the purpose of making a profit which would be available for the purpose of division in the form of dividend. . . . The distinction is drawn between an undertaking which is carried on for private gain and one which is carried on for the public benefit. The water board is, I think, trading, but in my opinion it is a body of persons who do not trade for a profit within the meaning of the section."

By s. 7 (1) of the Act of 1919 the provisions of the Act or Order by which land is authorised to be acquired, or of any Act incorporated therewith, "shall have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have and shall not have effect." The effect of this enactment in relation to the compulsory powers of purchase contained in a local Act was considered in the case of *Blackpool Corporation* v. *Starr Estate Co., Ltd.*, 1922, 1 A.C. 27. The Blackpool Improvement Act, 1907, by s. 70, provided that the owners were to sell and the corporation to buy certain land at a price to be determined, in default of agreement, by arbitration under the Lands Clauses Acts, as modified by that Act. Notice to treat was served upon the owners by the corporation prior to the date of operation of the Act of 1919, but no arbitrator had been appointed. Questions having arisen as to whether compensation was to be assessed under the Act of 1919, or under the local Act, it was held by the House of Lords, affirming the decision of the Court of Appeal, that the Act of 1919 did not apply, and that compensation must be ascertained in the manner provided by the local Act. This decision was based by Lords FINLAY, CAVE and PHILLIMORE on the grounds that s. 70 of the local Act embodied an agreement between the parties for sale and purchase of the land, and that the land was not authorised to be acquired compulsorily, and that the general language of the Act of 1919 ought not to be construed, in the absence of clear words, as affecting the special provisions of s. 70 of the local Act. Lord SHAW, in his judgment, agreed on the first ground, but dissented as to the second. Lord HALDANE accepted the second ground as the basis of his judgment. The majority

of the Lords thus based their decision on the view that though the local Act authorised the compulsory purchase of the land in question, the land was acquired under a statutory bargain in pursuance of powers contained in the local Act.

The Blackpool decision was much quoted and discussed in the later case of *Thurrock, Grays and Tilbury Joint Sewerage Board* v. *Thames Land Co., Ltd.*, 1926, 90 J.P. 1. There a sewerage board had carried a sewer and rising main through certain lands, in pursuance of powers conferred on them by the Public Health Act, 1875; subsequently an agreement was entered into between the board and the owners of the lands with reference to what had been done; but the parties being unable to agree as to the sum to be paid the owners by way of compensation, a sole arbitrator was appointed pursuant to the Public Health Act, 1875. He made an alternative award in the form of a special case for the opinion of the High Court. The award stated that if the court should be of opinion that the arbitration was an arbitration under the Public Health Act, the company would be entitled to £5,090; but if it were held to be under the Acquisition of Land Act, then the company would be entitled to the sum of £2,148.

The court held that as the sewer was laid under the powers of the Public Health Act, before the agreement above referred to was made, there was a compulsory acquisition of the land; and that as there was nothing in the agreement which touched the primary basis of the value of the land itself, there was nothing inconsistent with the application to the case of the rules of the Act of 1919. The arbitration was therefore an arbitration under that Act, and the company were entitled only to the sum of £2,148.

The question was raised in this case, but not decided, as to whether a local authority can contract not to be bound by the Act of 1919. Referring to the Blackpool decision, which counsel for the landowners in the present case had attempted to apply in their behalf, ROCHE, J., in the course of his judgment said: "That is a different case from this one, and the only general assistance to be derived from it is, I think, the principle which emerges from the decisions of the majority of their lordships, namely, that where the Act of 1919 speaks of land being authorised to be acquired compulsorily it involves that the Act is not to apply unless the land is, not merely authorised to be acquired, but *is* acquired compulsorily."

A curious point was raised under the Act in the recent case of *Gross, Sherwood and Heald* v. *The Essex County Council*, 1927, 1 Ch. 205. An arbitrator had been duly appointed by the reference committee, in pursuance of s. 1 of the Act, to determine the amount of compensation payable by the Essex County Council in respect of certain lands acquired compulsorily by that authority. Whilst the matter was in course of hearing the arbitrator fell ill, and another arbitrator was appointed in his place by the reference committee. The first arbitrator resigned his office on account of ill-health, but subject to the completion of any existing arbitration.

The court held that the appointment of the second arbitrator was valid, and that he was entitled to hold the arbitration here in question. Mr. Justice EVE, in the course of his judgment in the case, said that we must realise that a person appointed might die or become hopelessly incapacitated, and it must be assumed that the Legislature intended, not that the power of selection should be exhausted by one exercise of it, but that it should be a recurring power. On the facts he was satisfied that the arbitrator first appointed had become incapable of continuing the arbitration, and the authority of the reference committee must be regarded as including the power to replace him by someone else.

Reference may here be made to an important extension of the functions and duties of the official arbitrator appointed for the purposes of the Acquisition of Land Act, which has been made by the Law of Property Act, 1925. Under s. 84 of this Act the official arbitrator is empowered, on the application of any person interested in any freehold land affected by any restrictive covenants, by order, wholly or partially to discharge or modify any such restriction, subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order. He must be satisfied: (*a*) that by reason of changes in the character of the property or the neighbourhood, or other material circumstances, the restriction ought to be deemed obsolete, or that its continued existence would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons; or (*b*) that the persons of full age and capacity entitled to the benefit of the restriction have agreed, either expressly or by implication, to the restriction being discharged or modified; or (*c*) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction.

Difficult questions relating to compensation have arisen in connexion with reconstruction or improvement schemes of local authorities made under the Housing Acts. By a proviso to s. 7 (1) of the Acquisition of Land Act, 1919, nothing in that Act relating to the rules for assessing compensation shall affect any special provisions as to the assessment of the value of land acquired for the purposes of Pt. I or Pt. II of the Housing of the Working Classes Act, 1890, or any Act amending that Act. Part I and Pt. II of the 1890 Act, which relate respectively to improvement and reconstruction schemes, are now replaced by Pt. II of the Housing Act, 1925, and the special provisions relating to compensation for land taken under such schemes are contained in s. 48 of the later Act. It is thereby provided that, subject to those special provisions, the compensation to be paid for such land shall be assessed in accordance with the Acquisition of Land Act, 1919.

In the recent case of *Northwood* v. *London County Council*, 1926, 2 K.B. 411, compensation questions of far-reaching importance came before the court on a case stated by the official arbitrator, in reference to land compulsorily acquired by the London County Council for purposes of an improvement scheme. On the land so acquired there was a fully licensed public-house. The land was included in the scheme and coloured pink on the map attached thereto, that colour signifying that the land was included as being part of an unhealthy area, and not merely for the purpose of making the scheme efficient, in which latter case the owner and other parties interested would have been entitled to ordinary compensation terms. The lessee of the licensed premises claimed that in awarding compensation for compulsory acquisition the arbitrator had power to award him a sum for trade disturbance or the loss of his interest in the licence, or, alternatively, a sum for the value of the licence as increasing the site value, and the value of the trade fixtures. Under the special provisions of s. 46 (1) of the Housing Act, 1925, above referred to, "the compensation to be paid for the land, including any buildings thereon, shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building bye-laws for the time being in the district." The court (Lord HEWART, C.J., SALTER and BRANSON, JJ.) held that the words "land, including any buildings thereon" comprise everything which appertains to the premises compulsorily acquired, including fixtures, and that no additional sum may be awarded for trade disturbance or loss of trade. "The statute, by limiting the compensation to the selling value of the cleared site, excludes compensation for anything else; and though the suitability of the site for a public-house, and, for that matter, for any other kind of enterprise, is of course an element in its selling value, the fact of the existence of a licence, perfectly useless apart from the buildings which are not the subject of compensation and which are to be treated as having been cleared away, cannot affect the selling value." (Per Lord HEWART.)

This decision, which is doubtless sound in law, shows how inequitably in individual cases the stringent provisions of the Housing Act in regard to land acquired in pursuance

of any improvement scheme may operate. The Departmental Committee on Unhealthy Areas, which reported in 1920 and 1921, commented adversely on those provisions, and public speeches of the Minister of Health seem to indicate that the Government intend to introduce amending legislation in regard to this matter when opportunity offers.

The *Northwood Case, supra*, had an interesting sequel. The arbitrator duly incorporated in his final award the opinion of the High Court on the special case submitted to the Court. Thereupon the claimant applied to a second Divisional Court to set aside the award upon the ground that it was bad in law on the face of it. The respondents took a preliminary objection that no appeal lay by reason of the provision in s. 6 (2) of the Acquisition of Land Act, 1919, that "the decision of the High Court upon any case so stated shall be final and conclusive and shall not be subject to appeal to any other court." The Divisional Court dismissed the application (1926, 2 K.B. 411), and the claimant then appealed to the Court of Appeal. The court upheld the preliminary objection and dismissed the appeal, holding that the provision above cited applied to a decision of the High Court at any stage of the proceedings, either intermediate proceedings, as in the present case, or at the conclusion of the proceedings. "Here what we have to deal with," said BANKES, L.J., in his judgment, "is a sub-section which in the plainest terms makes the decision of the court, whether it is an advisory case or whatever form the case may take, upon any special case stated, final and conclusive. Under these circumstances it seems to me to be impossible for a person to say, in face of that statutory provision, that there is an appeal" (1927, 91 J.P. 93).

Coming now to the important question of costs under the Acquisition of Land Act, it is provided by s. 5 thereof that where the acquiring authority has made an unconditional offer in writing of any sum as compensation and the sum awarded does not exceed the sum offered, the official arbitrator must order the claimant to bear his own costs, and also to pay the costs of the acquiring authority so far as incurred after the offer was made, unless for special reasons he thinks proper not to do so. On the other hand, where the claimant has made an unconditional offer in writing to accept any sum as compensation and has complied with certain other conditions prescribed by the section above cited, and the sum awarded is equal to or exceeds that sum, the official arbitrator, unless for special reasons he thinks proper not to do so, shall order the acquiring authority to bear their own costs, and also to pay the costs of the claimant so far as incurred after the offer was made. Subject to these rules the costs of an arbitration under the Act of 1919 "shall be in the discretion of the official arbitrator, who may direct to and by whom and in what manner those costs, or any part thereof, shall be paid, and the official arbitrator may in any case disallow the costs of counsel."

The only reported decision relating to the exercise of the official arbitrator's discretion as to costs is that of *Bradshaw* v. *The Air Council* (1926, 1 Ch. 329). In that case the claimant was the owner of certain land regarding the acquisition and compensation for which an arbitration was held under the Act of 1919. He claimed £17,362 as compensation, but prior to the arbitration the Air Council made an unconditional offer of £10,000 for the land, which had been taken compulsorily by them. The arbitrator awarded the claimant £11,415. Dealing with the costs in his award, he directed the Air Council "to pay the sum of £100 towards the costs of the claimant." The claimant's costs in fact amounted to nearly £500. The arbitrator had no information before him as to the costs actually incurred by either party to the proceedings.

The claimant subsequently applied to the High Court by motion for the award to be remitted to the arbitrator on the ground that, in making the order as to costs, he had not properly exercised the discretion conferred on him by sub-s. (4) of s. 5 of the Act. It was held that, in awarding the lump sum of £100, the arbitrator had in terms awarded the claimant "part" of the costs of the arbitration within the meaning of the sub-section cited; and that, as it seemed reasonably clear from the statute that when a sum was awarded by the arbitrator in excess of the sum offered by the acquiring authority, but less than the sum the claimant had offered to accept, the arbitrator had an absolute discretion as to the costs, the motion to review the award failed.

The only comment we would make on this decision is to suggest, with respect, that an arbitrator is not in a satisfactory position to exercise his discretion as to costs if, as in the present case, he has neither asked for nor has available any information as to the amount of the costs; in other words, that for the proper exercise of his discretion there should be a basis of evidence in regard to costs, as there must admittedly be in regard to the value of the land in question. That in effect was the gist of the arguments for the claimant. The position here was complicated somewhat by an agreement, which was stated to have been arrived at between counsel for the respective parties, to the effect that the costs of the party to whom costs might be awarded should be taxed under the Lands Clauses Acts. On this point the learned judge (Mr. Justice ROMER) said he could find no agreement—in the transcript of the shorthand notes of the arbitration—that if the amount awarded to the claimant should be in excess of the £10,000 offered by the Air Council, he was to have the whole of the costs of the arbitration paid to him by the Air Council. Notwithstanding the decision of the learned judge in this case it is submitted that the official arbitrator under the Acquisition of Land Act, 1919, should, in every case, either require the parties to the arbitration to supply him with particulars of their respective costs in the matter, so that he may be in a position to exercise reasonably the discretion regarding costs vested in him by the Act, or that, in the absence of these particulars, he should exercise the alternative power conferred on him of directing that the costs be taxed by a taxing master of the High Court in accordance with the practice under the Lands Clauses Acts.

## The Landlord and Tenant Act, 1927

Mr. CECIL R. HAVERS, B.A., LL.B., delivered a very interesting and instructive lecture on the above Act before the Solicitors' Managing Clerks' Association at the Inner Temple Hall recently, with the Hon. Mr. Justice HILL in the chair. There was an excellent attendance.

After a few introductory remarks, Mr. HAVERS said he feared that the title of the lecture was a little too ambitious as it would be impossible to deal with the whole of the Act. He would, therefore, confine his remarks to some of its main provisions. The Act presented considerable difficulties both in its construction and in its application. Probably his lordship could view it with greater equanimity than any of those present, for sitting in the comparatively calm and serene atmosphere of the Probate, Divorce and Admiralty Division he will be able to watch others struggling to unravel its difficulties.

The first part of the Act—which confers upon the tenant new and important rights—is limited in its application to premises used wholly or partly for trade or business purposes. Part II of the Act contains some general amendments of the law of landlord and tenant, as a whole, and is of general application to all properties, except that some of its provisions do not apply to agricultural holdings within the meaning of the Agricultural Holdings Act, 1923, and certain of its provisions do not apply to mining leases. Part III of the Act deals mainly with the constitution of the tribunal appointed to determine claims and questions arising under Part I.

As regards Part I, it appears to be an attempt to mitigate the hardship which outgoing tenants have hitherto suffered

in certain cases by reason of the fact that any improvement executed or goodwill created by them during their leases passed at the termination of the tenancy to and became the property of the landlord. The Act provides that tenants of holdings within the Act shall be entitled to compensation for certain improvements and also for certain goodwill at the termination of the tenancy on quitting the holding; and in certain exceptional cases, instead of relief by way of compensation for goodwill, a tenant may apply for a new lease. In dealing with the provisions of the Act relating to compensation for improvement and to compensation for goodwill or, in lieu of compensation for goodwill, to a tenant's right to a new lease, I propose to examine these rights and to trace the steps which a tenant must take in each case, and the way in which he should present his claim to the tribunal.

In the first place, the Act applies to all premises held under a lease, whether made before or after the commencement of the Act (Sunday, 25th March) and used wholly or partly for trade or business purposes, with, however, certain exceptions, viz., (1) agricultural holdings within the meaning of the Agricultural Holdings Act, 1923; (2) mining leases; (3) a holding let to a tenant holding any office, appointment or employment from the landlord—so long as the tenant holds such office (in the case of a tenancy created after the 25th March the provision only applies if the contract is made in writing and expresses the purposes for which it is so made); (4) premises whereon the tenant carries on the business of sub-letting them as residential flats, whether or not provision is made for meals or services are rendered; and (5) premises used for carrying on a "profession" which, speaking generally, are excluded from the operation of the Act. If the premises are regularly used for carrying on a profession then the provisions of the Act relating to improvements apply. The word "regularly" is worth some little attention, because s. 17, which deals with the properties falling within the Act, does not employ this word with reference to property which is used wholly or partly for a trade or business; it is only when you come to this exception with regard to premises used for a profession that you find the word "regularly" employed. It would appear to follow, therefore, that an artist who regularly uses his studio for the purposes of his profession and executes an improvement to the studio would be entitled to make a claim for compensation for an improvement. On the other hand, if he used the premises for that purpose only occasionally, apparently he would not be so entitled. The result of it is that as regards premises used for a profession, in no case can there be a claim for compensation for goodwill; but there may be a claim for compensation for improvements provided the premises are regularly used for carrying on the profession.

Now there is a provision also with regard to premises which are used partly for trade or business purposes and partly for other purposes. The Act provides that with regard to such premises its provisions apply only to improvements so far as they are improvements in relation to the trade or business. Take, for instance, premises consisting of a dwelling-house on the first and second floors, and a shop on the ground floor. If the tenant makes an improvement to the shop by putting in a new shop front that clearly would be an improvement in respect of which he would be entitled to compensation; but if, on the other hand, he puts in a new bathroom on the first or second floor, then it is equally clear he would not be entitled to compensation. It does not, however, necessarily follow that the improvements must be made in the part of the premises used for trade or business. It is sufficient if the improvement made is an improvement in relation to the trade or business.

Now it is vitally important to ascertain what is the meaning in the Act of a trade or business; and it is equally important but not quite so easy to ascertain what is a "profession." Unfortunately the Act contains no definition of either of these expressions, and therefore one is bound to have recourse to decided cases to see what light they throw upon the meaning attached to those words in other cases as a guide to ascertaining what meaning the tribunal is likely to put upon those words in this Act. It must always be borne in mind, in considering other cases, that they have been chiefly decided upon the meaning of these words in other Acts, and that meaning may, of course, require to be modified in view of the express provisions of this Act. There is one case which may throw some light upon the meaning of the word "trade." Lord DAVEY in the case of *Commissioners of Taxation* v. *Kirk*, reported 1900, A.C. 592, says: "The word 'trade' no doubt primarily means traffic by way of sale or exchange or commercial dealing, but may have a larger meaning so as to include manufactures." Business, on the other hand, seems to have a wider significance than trade. Lord JESSEL, in *Smith* v. *Anderson*, 1880, 15 Ch. 247, at page 258, says: "Anything which occupies the time and attention and labour of a man for the purpose of profit is business. It is a word of extensive use and indefinite signification." Then, coming to quite recent times, Lord HANWORTH, in *Re a Debtor*, 1927, 1 Ch., at page 103, says: "It is clear from a consideration of the cases that the addition of the word 'business' has added much to the scope of the word 'trade' when used alone." You will notice that in this Act the words are "trade or business" in that collocation. There is one case which seems to me to be very illuminating as to the meaning of the word "profession." SCRUTTON, L.J., in *Commissioners of Inland Revenue* v. *Maxse*, 1919, 1 K.B. 647; 63 SOL. J. 429, said: "It seems to me as at present advised that a 'profession' in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word 'profession' used to be confined to the three learned professions, the Church, medicine and law. It has now, I think, a wider meaning." Then going on to deal with the particular facts before him the learned Lord Justice said: "It appears to me clear that a journalist whose contributions have any literary value as distinguished from a reporter, exercises a 'profession'; and that the editor of a periodical comes in the same category." To my mind those observations of SCRUTTON, L.J., though made with reference to a case upon the Excess Profits Duty, approximate very closely to the interpretation which the court is likely to put upon the meaning of the word "profession" used in this Act.

The next question which arises is whether the person who occupies the holding, is a tenant within the meaning of the Act. In the interpretation section (25) a tenant is defined as "Any person entitled in possession to the holding under any contract of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise." That is obviously a very wide definition. You see that there is no restriction as to the length of the term. It covers a tenancy for a term of years, a tenancy from year to year, or any smaller periodic tenancy such as a monthly tenancy. Not only that, but when a tenant dies his personal representatives become the tenant, or when he makes an assignment of the term the assignee becomes the tenant. We will assume that a tenant has executed an improvement in accordance with the Act, and, having done so, assigns his term, then the original tenant has no claim to compensation, but the assignee in possession at the end of the term is the person who is entitled to compensation for the improvement made by the original tenant. And again, if the tenant is adjudicated a bankrupt, the trustee in bankruptcy becomes the tenant.

One very difficult question arises, and that is whether a "statutory tenant" under the Rent Restriction Acts is a tenant

within the meaning of this Act. It seems clear that premises which constitute a "dwelling-house" within the Increase of Rent and Mortgage Interest Restrictions Acts may be a holding within the meaning of the Landlord and Tenant Act, 1927. On the other hand, it is a matter of grave doubt whether a "statutory tenant" is a tenant within the meaning of the Landlord and Tenant Act. But whether he is or not—though I am not expressing an opinion on that—even if he is a tenant within the meaning of this Act, he is confronted with a real problem in the way of making his claim in accordance with the Act. I shall deal a little later with the requirements of the Act as to making a claim, and it will be obvious, I think, that even if a statutory tenant is within this Act, it will be a matter of the gravest difficulty for him to make a claim effectively in accordance with the Act.

Then comes the question, who is the "landlord"? The landlord is defined as "Any person who under the lease is, as between himself and the tenant or other lessee, for the time being entitled to the rents and profits of the demised premises payable under the lease." That definition is a considerable improvement on the definition of a landlord contained in the Agricultural Holdings Act, 1923. The words added in this Act were obviously added to carry out the suggestion made by Lord Justice Atkin in *Richards* v. *Pryce*, 1927, 2 K.B. 76. It now seems clear that where, for instance, the lessor, who under the lease is entitled to the rents and profits of the premises, is a trustee, then the trustee is the landlord and not the *cestui que trust* for the purposes of this Act. Again, suppose the lessor agrees to sell the freehold to the purchaser, then, notwithstanding any agreement between vendor and purchaser, the lessor remains the landlord for the purpose of this Act unless and until there has been conveyance of the reversion and payment of the purchase money. In the same way, where a mortgagor is in possession of the holding, then the mortgagor, while he is in possession, is the landlord for the purposes of this Act. On the other hand, if the mortgagee goes into possession, then he, in turn, becomes the landlord. It seems to follow, too, that if a receiver is appointed under the L.P.A., 1925, then the mortgagor remains the "landlord," because the receiver is deemed to be the agent of the mortgagor: L.P.A., 1925, s. 109. The mortgagee may become the landlord in other ways. He will become the landlord if he obtains an order absolute for foreclosure or if he obtains a title under the Statute of Limitations.

There is one other thing to which I should direct your attention, namely, that the Act defines a person known as the original landlord. He is the person who is heretofore entitled to the rents and profits of the premises. It is a useful provision, because a tenant is perfectly safe in serving all the claims and documents, which he is required to serve by this Act, on the original landlord, unless and until he has notice that the original landlord has ceased to be so entitled, and also of the name and address of the person who has succeeded him.

Now I turn to the provisions of the Act with regard to an improvement in the case of a tenant who desires to-day to execute an improvement upon his holding in respect of which he will be entitled to compensation at the end of his tenancy. The first thing he has to do is to serve a notice upon his landlord of his intention to execute the improvement, together with a plan and specification of the proposed improvement and of the existing premises affected thereby. The landlord then has a right to object, and if he intends to exercise that right, he must serve upon the tenant a notice of objection. The tenant may then apply to the tribunal to certify the improvement as a proper improvement. The application, if it is made in the county court, is by summons under Ord. 50*b*, r. 16, and if in the High Court, by originating summons. It is the duty of the tribunal, in the first place, to be satisfied that any superior landlords interested have been served with a notice, and had an opportunity of appearing before it. Being satisfied upon that point the tribunal must then proceed to consider whether or not the improvement is a proper improvement. Now a proper improvement has to satisfy three tests. In the first place, it must be of such a nature as to be calculated to add to the letting value of the premises at the termination of the tenancy; it must be reasonable and suitable to the character thereof; and in considering that point regard must be had to any evidence brought before the tribunal by the landlord or a superior landlord, as to whether the improvement is calculated to injure the amenity or convenience of the neighbourhood. For instance, a petrol station or a fried fish shop in a nice residential area—or one of those buildings which become a blot upon the landscape. Lastly, the proposed improvement must not diminish the value of any other property belonging to the same landlord or to any superior landlord from whom the immediate landlord of the tenant directly or indirectly holds. If it fulfils these tests the tribunal may certify the improvement to be a "proper improvement." It has the right, however, to modify the plan and specification and it may impose any condition it thinks reasonable. But the tribunal, in one event, is bound to refuse to certify, and that is if the landlord proves that he has offered himself to execute the improvement in consideration of a reasonable increase of rent, unless, of course, the landlord fails to carry out his undertaking.

Having obtained this certificate, or, in a case where the landlord has not exercised his right to object, the tenant may execute the improvement in accordance with the plans and specifications as approved by the tribunal, or by agreement between himself and the landlord. It is important that the tenant should not make any deviation from the approved plan and specification, because, if he does, he loses the permission which is given to him under the Act, and will also lose his right to compensation. It must be borne in mind that the tenant is entitled under the Act to execute this improvement, notwithstanding any restriction to the contrary contained in his lease. The tenant having completed the improvement may apply to his landlord for a certificate that it has been properly executed. If the landlord fails to grant this certificate within one month the tenant may apply to the tribunal. It is of the utmost importance that the tenant should do this, as if the lease is going on for a number of years he may have great difficulty in proving that the improvement was properly executed.

The next step is to consider the tenant's right to compensation. For this purpose we have to assume that three years have elapsed since the execution of the improvement. You will recollect that certain conditions must have been fulfilled by the tenant. For instance, he must have served notice of the intended improvement, and if the landlord has served notice of his objection, the tenant must have got a certificate from the tribunal and the improvement must have been completed within the time fixed by the tribunal There is one more condition which the tenant must fulfil, he must make a claim in the manner prescribed by the rules and within a stipulated time as set out in Ord. 50*b*, r. 2, in the county court, or Ord. 53*d*, r. 1, in the High Court.

As regards the stipulated time, which is a matter of the utmost importance, the Act provides that where the tenancy is terminated by notice the claim must be made within one month after service of the notice on or by the tenant, and in all other cases not more than thirty-six and not less than twelve months before the termination of the tenancy. Now, assuming the claim to have been made, the Act provides that a tenant is entitled to compensation at the termination of the tenancy, on quitting his holding, in respect of any improvement (including the erection of any building) made by the tenant or his predecessor in title, not being a trade or other fixture which the tenant is by law entitled to remove, which at the termination of the tenancy adds to the letting value of the holding. Here again we meet with a preliminary difficulty as to the meaning of "improvement." Unfortunately,

there is no definition of "improvement" as there is in the Agricultural Holdings Act, but it is clear that the erection of a building may be and on the other hand a trade or other fixture which the tenant is entitled by law to remove, is not. One case may throw a little light on it, that is *London and South African Exploration Company* v. *De Beers Consolidated Mines*, 1895, A.C. 451. At p. 455 Lord Macnaughten says: "It was sought to confine the term 'improvements' to erections not affixed to the soil. But that is not the natural or proper meaning of the expression, which seems to be more applicable to something attached to and forming an integral part of the thing improved than to something which is merely added to it or placed upon it without annexation or union." But whatever is the meaning of the word "improvement," it is clear that an improvement in respect of which a right to compensation arises must fulfil certain conditions. For instance, it must fulfil the conditions of s. 3, it must be a proper improvement, or one to which the landlord has not objected. It must satisfy the requirements of s. 1, and it must not fall within the ambit of s. 2, which provides that in certain cases compensation shall *not* be payable in respect of improvements. They are: improvements made before the 25th March of this year; improvements made in pursuance of a statutory obligation or a contract for value, including a building lease or improvements made less than three years before the termination of the tenancy, or if within two months of the making of the claim under s. 1, sub-s. (1), the landlord serves notice upon the tenant offering to grant the tenant renewal on certain terms.

The question then arises upon what basis is compensation to be assessed. The Act does not expressly define the basis of compensation. What the Act does do is to prescribe two alternative maxima. It says: the sum to be paid as compensation shall not exceed either of two sums (1) the "net addition to the value of the holding as a whole which may be determined to be the direct result of the improvement," and (2) "the reasonable cost of carrying out the improvement at the termination of the tenancy," subject to deduction in certain cases. It is not quite clear what is the precise meaning of the word "net," but one explanation may be that an improvement to part of a holding may involve a detriment to another part. If the gain in value exceeds the loss, then the balance of gain would be the net addition to the value of the holding as a whole. That explanation, of course, may not be correct, but I have not been able to think of any other.

Then there is an important provision which the tribunal must regard when considering what the net value of a holding is as a whole. If the landlord intends to demolish the premises or to make any structural alterations or to use the premises for a different purpose, then the tribunal is to have regard to the effect of such demolition, alteration, or change of user on the additional value attributable to the improvements, and to the length of time likely to elapse between the termination of the tenancy and such demolition, alteration or change of user. You will see that that is a very important provision, because the tenant may have executed a very valuable improvement, nevertheless, if the landlord intends, for instance, to demolish the premises immediately, then the tribunal is bound to have regard to that fact, and it seems that the tenant is to get no compensation at all. This illustrates what I imagine to be a fundamental principle of the Act, that the landlord pays for the gain which he makes and not for the loss which the tenant suffers. On the other hand, to check any possible abuses of that provision, the Act provides that the tribunal may authorise a further application for compensation by the tenant if effect is not given by the landlord to his intention within a fixed time.

The only other direction in the Act as to the amount of compensation is that the tribunal must also take into consideration in reduction of the amount payable to the tenant any benefits which he or his predecessors in title may have received from the landlord or his predecessors in title. Subject to the maximum amount and to these directions there is no clear guide to be found in the Act as to the basis upon which compensation is to be assessed or as to the amount which is to be paid. It is possible that within those limits the tribunal will think right to have regard either to the tenant's loss or to the value of the benefit accruing to the landlord or possibly to the value of the improvement. I am afraid I cannot say which of these is likely to be adopted, or whether some other criterion may be accepted. For my own part I incline to the view that the basis is to be found in the proviso to the Act, namely, the net addition to the value of a holding as a whole directly attributable to the improvement, provided that it does not exceed the reasonable cost of carrying out the improvement at the termination of the tenancy. As regards the way in which questions as to the right to compensation or the amount of compensation are to be settled, the parties first of all are at liberty to settle between themselves; they are, alternatively, at liberty to refer to arbitration under the Arbitration Act, and failing agreement, they must be determined by the tribunal.

Just one word about compensation for goodwill. The Act, as you know, confers upon the tenant of a holding a right in certain cases to compensation for goodwill, and a tenant who desires to claim it must prove certain facts. He must prove that by reason of the carrying on of a trade or business by him or his predecessors in title at the premises for a period of not less than five years, goodwill has become attached by reason whereof the premises could be let at a higher rent than they would have realised had no such goodwill attached. Again, the right arises at the termination of the tenancy on quitting the holding, and, as in the case of an improvement, there is no definition in the Act of the word "goodwill." It is important to remember when you are considering cases on the meaning of the word "goodwill," that whatever meaning it may have borne in certain cases, that meaning must be considered afresh in the light of the express provisions in this Act. For instance, in this Act "goodwill" must have become attached to premises, by reason of the tenant or his predecessors in title having carried on a trade or business at the premises for five years; it must enhance the letting value of the premises, and it must not be exclusively attributable to the situation of the premises, and it must be of a trade or business and not of a profession.

It is a condition precedent to the tenant's right that he makes a claim in the prescribed manner, and in the stipulated time; and there are certain cases where no compensation is payable in any event to a tenant. The first one is where the landlord serves a notice of renewal within two months after the making of a claim. Secondly—and it is a very important one—if the tenant has determined the tenancy or failed to exercise an option for a further term contained in the lease or a collateral agreement, unless, in the case of an option, the terms are such that the tenant could not reasonably be expected to exercise it. But that is not so in the case of an improvement. If the tenant executes an improvement and then gives notice to quit, he is not deprived of his right to compensation for the improvement. But if he terminates the tenancy he is not in any event entitled to compensation for goodwill. There are other cases. Where, for instance, a Government Department or a local or public authority are landlords and they terminate the lease by resuming possession, there again no compensation is payable. The other important exception is if the landlord offers alternative accommodation. The test of the alternative accommodation is whether the alternative premises would reasonably preserve to the tenant the goodwill of the business. That is equally an answer to an application by a tenant for a new lease.

No compensation is payable where a landlord has before the 31st March, 1927, granted or agreed to grant a reversionary lease commencing on or after the existing tenancy. Again, you will see that there is no express definition in the Act as to

the basis of assessment of compensation. What the Act does is to prescribe a maximum which must not be exceeded, that is, such addition to the value of the holding at the termination of the tenancy as may be determined to be the direct result of the carrying on of the trade or business by the tenant or his predecessors in title. Again, we have the very important provision that if the landlord intends to demolish the premises wholly or partially, or to use the premises for a different and more profitable purpose, the tribunal must have regard to the effect of such demolition or change of user on the value of the goodwill to the landlord. The effect of that provision, of course, may easily be that though there is a valuable goodwill the tenant will not be entitled to any compensation for it.

There are also a few other directions as to the amount of compensation. The tribunal is to have regard to the intentions of the tenant as to carrying on the trade or business elsewhere, and it may make it a condition of its award that the tenant shall undertake not to carry on business within such distance of the premises as may be specified in the award. Then there is another very important provision: the tribunal is to disregard any value which is attributable exclusively to the situation of the premises. There are also cases where goodwill has been created or increased by a restriction imposed by the landlord, in which case the tribunal may award no compensation at all or a reduced amount of compensation. In the case of licensed premises the sum payable as compensation is not to include any addition to the value of the premises attributable to the fact that the premises are licensed. Subject to the maximum and to those directions there is no clear guide as to the basis of assessment, and it remains to be seen upon what basis the tribunal will proceed to assess the compensation. Obviously, the usual method of assessing a sum for payment of goodwill will not apply in this case. One possible way may be to find how much the goodwill has increased the rental value of the premises and then to take so many years' purchase.

I would like to say just a few words about the alternative remedy open to a tenant in cases where he would be entitled to compensation for goodwill, but the compensation which could be awarded him would not compensate him for the loss he would suffer if he removed to and carried on his trade or business at other premises. In such a case he can serve a notice upon the landlord requiring a new lease, but that is an alternative remedy. The tenant must elect either to claim compensation for goodwill, or to proceed under this section and claim a new lease, by plaint and summons in the county court, or, in the High Court by originating summons. When the notice has been served, an application may be made to the tribunal, either by the landlord or by the tenant, and it must be made within a stipulated time: "Not less than nine months before the termination of the tenancy, or, where the tenancy is terminated by notice, within two months after the service of the notice." It makes an important difference whether the application to the tribunal for a new lease is made by the landlord or by the tenant, because where the tenant is the applicant he is not entitled to an order unless he proves that he is a suitable tenant, that he would be entitled to compensation under s. 4 for goodwill and that the sum which could be awarded him for such compensation would not compensate him for the loss he would suffer if he removed to, and carried on his trade in other premises. Unless the tenant proves those facts the tribunal is precluded from ordering a new lease, but even if these facts are proved, where the tenant is the applicant the landlord may be able to prove one of four different facts, and, if he does, the tribunal is compulsorily barred from ordering the granting of a new lease. The facts which it is open to the landlord to prove, are: "(1) That the premises are required for occupation by himself, or, where the landlord is an individual, for occupation by a son or daughter of his over eighteen years of age; or (2) That he intends to pull down or re-model the premises; or (3) That vacant possession of the premises is required in order to carry out a scheme of re-development; or (4) That for any other reason the grant of such a lease of the premises would not be consistent with good estate management." Now, if the landlord proves either of those facts the tribunal is barred from granting a new lease; but it may in such circumstances impose a condition upon its refusal, namely, that if the landlord fails to carry out his intention within such period as may be allowed by the tribunal, the landlord shall pay to the tenant such compensation as the tribunal may fix not exceeding the amount of the loss which the tenant has suffered by reason of his having been deprived of a new lease under s. 5.

This is apparently designed to check abuses on the part of the landlord in proving one or other of those intentions; but it may incidentally work a hardship in some cases. Suppose the landlord proves that he wants vacant possession for a son over eighteen, and on that ground the tribunal refuses to make an order. If that son died soon after the application, then possibly the landlord would have a condition imposed on the refusal and he might have to pay compensation. It seems, too, that the power of imposing such condition is additional and not alternative to the power which the tribunal has of granting compensation where it is precluded from ordering a new lease because the landlord proves one of the four facts referred to.

The landlord may, however, escape his obligation to grant a new lease if he offers as an alternative to sell his interest in the premises and his interest is adequate, or offers alternative accommodation which would reasonably preserve to the tenant the goodwill of his business. But it has to be borne in mind that once a new lease has been granted the Act does not enable the tenant to go on in perpetuity obtaining a succession of new leases; when a new lease or renewal has been granted, the power of the section is exhausted. On the other hand, it is open for a tenant to make a claim for compensation for goodwill created during the new lease or renewed lease.

Obviously, one of the difficult problems which will confront you is to make up your mind as to whether or not the tenant should elect to claim compensation for goodwill, or to serve a notice requiring a new lease. It seems that where a tenant has a valuable goodwill and wants to continue to carry on his business, there is much to be said for electing to serve a notice requiring a new lease, rather than claim compensation for goodwill. There are a number of restrictions imposed both as to the right to, and the amount of compensation for, goodwill, and until there have been decisions in the courts upon this section there must be some uncertainty as to the amount which any tenant is going to get as compensation for goodwill. An important point to bear in mind is the fact that in some cases goodwill may be exclusively attributable to the situation of the premises, in which case the amount of compensation will be nil; and if it is largely so attributable, it will be small. On the other hand, the tenant must satisfy the tribunal that the compensation would be inadequate, and once he sets the machinery of this section in motion—even if he does not want to proceed afterwards—the landlord may apply to the tribunal for an order granting a new lease, and when that order is made the landlord must grant and the tenant must accept it.

There is one other point to be considered. The landlord may escape his obligation of granting a new lease by offering to sell to the tenant his interest in the premises, and therefore a tenant may possibly be confronted on applying for a new lease with an offer from the landlord to sell. On the whole it seems to me that where the goodwill is valuable and the tenant wants to continue carrying on the business, certainly the notice requiring the new lease has a lot to commend it.

I thank you very much for the kind attention you have given me. (Applause.)

The President (Mr. Hammond) then proposed a vote of thanks to Mr. Havers for his valuable lecture, to Mr. Justice Hill for presiding, and to the Benchers of the Inner Temple for so kindly granting the use of the hall to the Association.

Mr. Justice Hill: Mr. Hammond, Mr. Smith, Ladies and Gentlemen, I thank you for your thanks. As a Bencher of this Inn I may also thank you for your thanks to the Benchers. I am sure it is a very great satisfaction to them that the hall should be put to so excellent a use as a gathering so numerous as this to listen to a lecture so admirably put before it as this lecture has been. It is a great pleasure to me to be here. As Mr. Hammond has reminded, me I was once before asked to have the honour of presiding at one of these lectures, and as he says, in my off-time I absolutely declined to listen to anything about divorce. But to-day I am very glad to be here to be instructed. I suppose I am the only man in this room who has never had to consider anything about a statutory tenant. I am glad to say that it is a subject on which my mind is a complete blank; and it would be a complete blank upon the Landlord and Tenant Act of 1927 if it were not that Mr. Havers kindly sent me a very useful book yesterday which I looked at a little so that I might not be entirely ignorant. None of us can say that our minds are a blank now on this subject, having listened to the lecture which has covered succinctly so much of the ground, though, having looked at the little book, I know that there is a great deal of ground he will have to cover on another occasion.

I do not know much, and I never did know much about the law of landlord and tenant. I only know that in my early days I used to give wise advice to my pupils, among whom I am proud to number the Solicitor-General. When those admirable instructions which you prepare came into chambers, I always said to them: "Take the papers, find out all that is in them, master all the facts, do not trouble about the law, think out what common sense dictates, assume that the law is the same, then go to the books and see if any judge has been so unwise as to say the contrary." But I always made this qualification: "If it is a matter of landlord and tenant, again master the facts, then think what common sense dictates, assume that the law says the contrary, and then go and search the books to see if any judge has been wise enough to say that law agrees with common sense." But that is a long time ago, there have been some Acts of Parliament since then, and now we have an Act which perhaps is going to put many of these things right. It is a great experiment, obviously, and opens to all of us who have to study it in some respects a very new field. It is a great experiment. I wish it God-speed. I hope it will be a great success. Mr. Havers has not had time to tell us about the machinery and the tribunal, but it seems to me that in truth, the success or non-success of this great experiment will very largely depend upon the selection of the right men upon the panel of referees and upon the referees doing their work with care and with judgment. It will be, I feel sure, difficult to get this Act into good working order; but if there are wise men chosen for referees, and they do their work with care and with wisdom, we may hope great things from the Act. They will be called in when the parties have gone to the tribunal, but you will always remember, having mastered the principles which underly either the granting of possession or the granting of a new lease under this Act, that the crowning glory of a solicitor is when he keeps the parties altogether from the courts, and makes them agree among themselves without troubling the courts.

Ladies and Gentlemen, I thank you. (Applause.)

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**The Council of the Law Society have appointed Mr. G. R. Y. Radcliffe, Fellow and Bursar of New College, Oxford, to the office of Principal and Director of Legal Studies to the Society, in the place of Mr. E. C. S. Wade, who has tendered his resignation as from the end of the current session on appointment to a Lectureship in Law at Cambridge University. Mr. Radcliffe was called to the Bar in 1913.**

# The Doctrine of *Cy-près*.

The doctrine of approximation, generally known as the doctrine of *cy-près*, is one of construction. It has been considered as being rather a stretch of judicial authority, and its origin may be ascribed to what may be described as the indulgent aim of our courts of law to carry into effect the intentions of testators without infringing any rule of law, whence, in conformity with this aim, they have considered themselves bound to adopt that construction which satisfies the testator's general intention (see "Fearne on Contingent Remainders," Vol. I, p. 204).

The doctrine has not had universal approval, and has been repudiated by certain of the American states. In Pennsylvania, however, it has to some extent been introduced by statute, and has been approved in all the New England States with the exception of Connecticut, and undecided in some of the others.

In our English courts the doctrine has been usually applied in connexion with gifts to charitable purposes, and occasionally resorted to in cases of limitations of real estate when void as contravening the law relating to perpetuities, but then only where the estates in remainder were estates in tail, the court taking the liberty of altering such limitation to what the testator would have done had he been acquainted with the law.

The Law of Property Act, 1925, has, in effect, limited the application of the doctrine to cases connected with gifts to charitable purposes, for entailed interests can now be created only by the like expressions as those by which before the commencement of the Act, i.e., 1st January, 1926, a similar estate tail could have been created by *deed*, not being an executory instrument (see s. 130 (1).)

The law relating to perpetuities having no application to trusts for charitable purposes, the doctrine of *cy-près* is applied to charities in order to carry into effect the charitable intentions of a testator in those cases where, and only where, a general charitable intention to devote property to charity can be discovered. The tendency of the courts however is to infer that a gift has been made for general charitable objects, even when a particular charitable object does not exist, or where it has become impossible or impracticable.

The slightest indication of such an intention is therefore seized upon as sufficient to give the court jurisdiction to apply the doctrine, and the intention may be shown from the *nature of the dispositions themselves* (*In re Monk*, 1927, 2 Ch. 197, at p. 210).

This equitable rule in favour of a "general charitable intention" has gone further than any other rule or canon of construction in defeating the real intention of testators, (Lord Parker in *Bowman* v. *Secular Society*, 1917, A.C. 406, at p. 442).

Thus it has been held that where such an intention can be discovered in conjunction with a trust for a particular charitable purpose which cannot be executed, the court feels itself at liberty to adopt another mode consistent with the general intention so as to execute it in substance: *Att.-Gen.* v. *Boultbee*, 2 Ves. Ir. 380, at p. 387.

There can, however, be no question of applying a gift *cy-près* until it is clearly established that the directions of the testator cannot be carried into effect, and the fact that the testator's directions may be unwise, or that no beneficial application of the trust property can be found, cannot be considered, but where the doctrine has to be applied, it is competent to the court to consider the comparative advantages of various charitable objects, and to adopt the one which seems most beneficial (*In re Weir Hospital*, 1910, 3 Ch. 124, at p. 132); the court may, in fact, sanction such change of mode as will secure more effectually the benefits intended (*Clephane* v. *Lord Provost of Edinburgh*, 1 H.L.Sc., 417).

The point which has to be considered in these cases is whether it is a gift for a particular charitable purpose and

for that purpose only, or whether there is a paramount intention to be gathered from the will that the gift shall, in any event, be applied for some more general charitable purpose, even if the particular mode of application which is prescribed cannot be carried into effect (PARKER, J., in *In re Wilson*, 1913, 1 Ch. 321).

If the gift for the particular purpose is for that purpose only, without there being any paramount intention to benefit any particular class of charitable objects, the gift fails if the particular directions fail, and is not within the other class of cases where one can direct a scheme because of a paramount intention to benefit a particular class of objects (*Ibid*, p. 324).

The jurisdiction of the court in applying the doctrine of *cy-près* was referred to by Sir JOHN ROMILLY, M.R., in the well-known case of *Philpott* v. *St. George's Hospital*, 27 Beav. 107. His lordship observed as follows: "An opinion at one time existed that whenever the court had to direct a scheme to be framed for the establishment of a charity, it had power to deal with the property as it pleased, in point of fact, to do anything which within certain limits it thought expedient to be done with the property. A more erroneous opinion and one less in accordance with the decisions of this court in matters of charity can hardly be conceived. The confusion and error have arisen from this—that the court has an unlimited power and discretion, or nearly so, in some cases in which it makes a scheme, but in other cases it has not. The distinction consists in this: If the testator has, by his will, pointed out clearly what he intends to be done and his directions are not contrary to the law, this court is bound to carry that intention into effect and has no right, and is not at liberty to speculate upon whether it would have been more expedient or beneficial for the community that a different mode of application of the funds in charity should have occurred to the mind of the testator or that he should have directed some different scheme for carrying his charitable intentions into effect. But there are other cases where the testator has devoted funds to charity generally and has not specified any particular charity or application of the funds. In these cases the King, as *parens patriæ* by His Sign Manual directs the charity to be carried into effect by the Attorney-General, or by the court, which then has full power to adopt any scheme which the Attorney-General, after considering the matter fully, should deem expedient. When there are accretions to a charity which are not specifically disposed of the court may, to some extent, act in a similar way."

From the cases above referred to it will be gathered that the court has not an unlimited jurisdiction in all cases to apply the doctrine of *cy-près*, and that, in fact, it has no jurisdiction to apply the doctrine where the gift is for a particular charity which fails, and no paramount general charitable intention can be inferred (and see *In re Parke*, 1918, 1 Ch. 437).

Again, the court has no jurisdiction to apply the doctrine in cases where the gift is void by the express enactment of a statute (*Chapman* v. *Brown*, 6 Ves. 404); where the gift is for a foreign charity and the trustees disclaim (*New* v. *Bonaker*, 4 Eq. 655), where the charity is founded and endowed by the Crown as distinguished from charities founded by Royal Charter granted to private individuals (*Attorney-General* v. *Smart*, 1 Ves. Sen. 72), for in such cases the Crown has paramount authority (*In re Queen's College, Cambridge*, 1 Jac. 1). Neither has the court jurisdiction to apply the doctrine where the charity is founded by an Act of Parliament (*Attorney-General* v. *Christ's Hospital*, 1896, 1 Ch. 883), or where the charity is dependent on a condition which is not fulfilled (*In re London University Medical Sciences Institute Fund*, 1909, 2 Ch. 1).

Then, again, there are cases where the court may have jurisdiction to apply the doctrine, but will not interfere. Such, for example, is the case where the trustees have a discretion and are desirous of exercising it and its intervention is unnecessary (*In re Lea*, 34 C.D. 528): where the fund is given to form part of the general funds of a permanent institution (*Welsh* v. *Gladstone*, 1 Ph. 290); where the gift is for special purposes differing from the objects of the institution (*Corporation of Sons of Clergy* v. *Mose*, 9 Sim. 610); and where the charity is to be administered abroad, and the trustees are not within the jurisdiction (*In re Fraser*, 22 C.D. 827).

In applying the doctrine the court has gone to the limit of its jurisdiction, if not beyond.

Thus, in the case of *Attorney-General* v. *Bishop of Oxford*, 1 Bro. C.C. 444 n., where money was bequeathed to build a church at A, as this was impossible, the court directed that the money could be applied in building a church at B, and in *In re Richardson's Will*, 58 L.T. 45, a fund bequeathed to the National Lifeboat Institution on condition that the institution should construct two tubular lifeboats and station them at Deal and Pwllheli, with a gift over to charities in default, the court sanctioned the placing of a lifeboat at a place not mentioned by the testator. So too, in the case of *In re Queen's School, Chester*, 1910, 1 Ch. 796, where the original object for which the school was founded, and which was specifically referred to in the trust deed, could not be given effect to under its existing constitution without aid of grants from the Board of Education, the court modified the existing constitution so far as necessary to comply with the regulations of the Board, and enable the school to secure the grants. In this case the permanent bye-law of the school that the headmistress should be a member of the Church of England was eliminated on the ground that the main object of the school could not be carried out under the then existing circumstances; and *In re Robinson*, 1925, 2 Ch. 332, where the gift for the endowment of an Evangelical Church was subject to the condition that a black gown should be worn in the pulpit unless there should be an alteration in the law rendering it illegal, the court considered the condition to be subsidiary to the main charitable object, and as the condition was found to be impracticable it might be dispensed with and the fund was directed to be transferred to the Ecclesiastical Commissioners as part of the endowment of the church.

These decisions support the view that the court will apply the doctrine of *cy-près* where the main charitable purpose is practicable, but the subsidiary purpose is impracticable by dispensing with, or varying the impracticable condition.

The Law of Property Act, 1925, s. 130 (1), having in effect abolished the application of the doctrine of *cy-près* as regards imitations of entailed interests, the jurisdiction of the court is now limited, as already stated, to applying the doctrine to charitable trusts, and this jurisdiction is exercised by the machinery of a scheme drawn up in chambers.

Prior to the Charitable Trusts Act of 1853, schemes were settled and drawn up by the Court of Chancery alone. They were made mainly in three classes of cases: first, where the directions contained in the instrument of foundation were ambiguous, imperfect, or otherwise insufficient; secondly, where the directions though originally precise and complete, had become, under altered circumstances, unsuitable to carry out the general intention of the foundation; and thirdly, where a scheme sanctioned by the court, itself had in like manner, become unsuitable for that purpose (per STIRLING, J., *In re Mason's Orphanage Case*, 65 L.J. Ch. 32, at p. 54). The Charitable Trusts Act, 1853, however, authorised the making of schemes by authorities other than the Court of Chancery, as for instance, the Court of Bankruptcy (now abolished) and the County Court, but subject as to the last-mentioned courts, to confirmation by the Charity Commissioners (see s. 36). The Act also conferred authority on the Charity Commissioners provisionally to approve of schemes in certain cases (see s. 54). Subsequently by the Charitable Trusts Act, 1860, the jurisdiction conferred by the Act of 1853 on the Court of Chancery, Court of Bankruptcy and County Court was, to the extent therein mentioned, also conferred on the Charity Commissioners. Still more recently the jurisdiction

so conferred has, in the case of "endowments" held solely for educational purposes, been transferred to the Board of Education (see Board of Education Act, 1899 and Orders in Council, 1900-1902, made thereunder), so that these authorities have, subject to certain restrictions and rights of appeal, concurrent jurisdiction with the Chancery Division of the High Court of Justice to frame schemes and are governed by the same principles as the High Court in applying the doctrine of *cy-près*. In exercising this concurrent jurisdiction the High Court will not interfere with the exercise by the inferior courts unless they execute their powers, as where a scheme framed by them contains something wrong in principle or wrong in law: *In re Campden Charities*, 18 C.D. 310. It will therefore, interfere and restrain them from carrying out a scheme which is *ultra vires: In re Weir Hospital* (1910), 3 Ch. 132.

This jurisdiction to interfere in cases where an inferior court or Government Department has exceeded its powers, is, at the present time, of some importance, owing to the tendency in so many Acts of Parliament, to refer questions of public importance to a Government Department. Such tribunal is not an autocrat free to act as it pleases, but is an inferior tribunal, subject to the jurisdiction which the Court of King's Bench for centuries, and the High Court since the Judicature Acts, has exercised over such tribunals, *per* FARWELL, L.J., in *Rex* v. *Board of Education*, 1910, 2 K.B. 165, at p. 179).

In some cases there is what may be termed a statutory jurisdiction to apply the doctrine of *cy-près*. Thus, the Roman Catholic Charities Act, 1860 (23 & 24 Vict., c. 134), provides that where property is given upon trust for a lawful charitable purpose for the exclusive benefit of persons professing the Roman Catholic religion, coupled with a trust for an unlawful purpose. the addition of the unlawful trust shall not invalidate the gift, but the property may be apportioned and the whole applied to lawful purposes.

This statutory jurisdiction to apply the doctrine to trusts for the exclusive benefit of persons professing the Roman Catholic religion is now of no great importance, since the decision of the House of Lords in the case of *Bourne* v. *Keane*, 1919, A.C. 815, which established the validity of bequests for masses for the repose of the souls of the departed, which previously to the date of that decision, were deemed to be superstitious, and as such within the uses intended to be suppressed by the Statute of 1 Edw. 6, c. 14 (The Chantries Act): *West* v. *Shuttleworth*, 2 My. & K. 684. The case of *Bourne* v. *Keane*, *supra*, did not, however, lay down that such bequests are charitable, but as trusts for the purposes of religion have always been recognised in equity as good charitable trusts, and as religion includes all forms of religion which accept the fundamental doctrines of the Christian faith, see Lord PARKER in *Bowman* v. *Secular Society*, 1917, A.C. 106, at p. 448-9, it would now seem difficult to discover any gifts for purposes connected with the Roman Catholic religion which could be apportioned or otherwise dealt with under the provisions of the Roman Catholic Charities Act, 1860, as being unlawful and still more difficult since the coming into force of the Roman Catholic Relief Act, 1926, which repealed the enactments then in force especially affecting persons of that religious persuasion.

## Cargo Discharge and Port Custom.

THE Court of Appeal, in the case of *Smith, Hogg & Co. Ltd.* v. *Louis Bamberger & Sons*, 72 SOL. J., p. 435, have held that the custom and practice of the Port of London requiring the shipowner to bear the expense of unloading a cargo of timber and of stacking it on the quay alongside the ship imposes this duty on the shipowner despite the inclusion in the charter-party of the customary clause that the cargo must be brought to and taken from "alongside" the steamer at the charterer's risk and expense as customary. There have been a number of decisions of recent years involving the interpretation of "alongside" within the meaning of this clause, and it appears to have been thoroughly established that cargo is alongside when it has been lowered down on to the quay and placed at the receiver's disposal by loosing the sling, or other medium of discharge, or in the case of cargo discharged by hand, when it has been passed outboard so that the receiver standing on the quay can take control of it. It has been decided, in cases where the above charter-party clause is operative, that when the transporting of cargo across a quay to railway trucks or other conveyance, or to a stacking place, not strictly alongside the vessel, has involved additional labour, the expense must be borne by the charterer or receiver notwithstanding any custom to the contrary. In short, custom of the port has not hitherto been permitted to over-rule the "alongside" clause if such custom involved a substantially increased expenditure over and above that required for discharging the cargo strictly alongside the ship. Some leading authorities for this statement are *The Turid*, 1922, 1 A.C. 397; *The Rensfjell and Other Vessels*, 40 T.L.R. 458; and *W. H. Hillas & Co. Ltd.* v. *Rederi Aktiebolaget Aeolus*, 43 T.L.R. 67. In the present case (*Smith, Hogg & Co. Ltd.* v. *Bamberger & Sons*), Mr. Justice WRIGHT in the court below followed the above authorities, and held in the case of timber discharged on to the quay that it was "alongside" within the meaning of the charter-party clause when it was available for release from the ship's tackle on the quay, and that the obligation of the receivers to take it arose at that moment; in his judgment, therefore, the receiver was responsible for the expense of the work done by the shipowner in stacking the timber on the quay. In the case of timber discharged overside into barges or lighters, provided by the receivers, it was the duty of the shipowner, according to the custom and practice of the Port of London, not only to lower the timber down into the barge, but to stow it therein in a reasonable and ordinary manner. Mr. Justice WRIGHT, guided by previous decisions, held this to be the shipowner's duty in the above case, and held that that custom was applicable to the charter. The obvious inconsistency of disallowing the custom in the case of quay-side discharge whilst recognising it with reference to barge discharge was commented on by Lord Justice SCRUTTON, who held that the custom of the Port of London must be deemed applicable to the charter in both cases. The additional expense cast upon the shipowner by the custom in the present case is undoubtedly light in comparison with that which the obedience to more onerous customs existing in certain other ports in the Kingdom would involve, and with which the shipowner has not been held liable to conform. If, indeed, the result of this appeal is to mean the invariable victory of custom over the alongside clause, then shipowners will be wise to insist on an amending clause in the charter-party. No doubt, in practice, the matter will resolve itself into a question of degree, and an alleged exaggerated custom involving disproportionate discharging expenses will not be upheld against the shipowner protected by the alongside clause; each particular case will stand upon its own merits. A suggested amendment is the addition of "notwithstanding any custom of the port to the contrary," after the alongside clause accompanied by some more precise limitation to the meaning of "alongside." It is difficult to conceive a more satisfactory limitation than that already referred to—the moment when the cargo is available for release from the ship's tackle, and it is submitted that this should be applicable equally to discharge into lighters or barges as to discharge on to a quay.

Mr. ALFRED JOHN ADAMS, Solicitor, of 304 Clement's Inn, Strand and Hemel Hempstead (Herts), has been appointed an Officer of the Most Noble Order of the British Empire (O.B.E.). Mr. Adams was admitted in 1898.

# Interrogatories in Running-Down Actions.

As a large number of the cases which occupy the time of the High Court and the County Court happen to fall within the category of what might be termed "running-down" actions, it has been thought convenient to confine the consideration of the rules with regard to interrogatories to the above-mentioned type of case.

The material rules are rr. 1 and 2 of Ord. 31. Rule 1 provides that "in any cause or matter the plaintiff or defendant by leave of the court or a judge may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer, provided that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness."

It is clear that every interrogatory that a litigant might desire to administer will not be allowed, but only those which not only relate to the matter in question in the cause or matter, but which also satisfy the requirements of r. 2 of Ord. 31, as being "necessary either for disposing fairly of the cause or matter or for saving costs."

As a general principle the object of administering interrogatories is two-fold, firstly to obtain admissions for the purpose of supporting the case of the party interrogating and secondly to destroy the case of the party being interrogated. As Lord ESHER, M.R., said in *Hennessy* v. *Wright*, 24 Q.B.D., at p. 447: "The objection . . . is that the answers to the interrogatories in question cannot disclose anything which can be fairly said to be material to enable the plaintiff either to maintain his own case or to destroy the case of his adversary. It must be admitted that, if the answers could be material for either of those purposes, the interrogatories ought to be answered."

There is, however, one important limitation to the above principle, and that is that interrogatories will not be allowed if they are of a fishing character. Thus, in *The Shropshire*, 127 L.T.R. 487, an action to recover damages for injury negligently caused to a ship by fire, an interrogatory as to how the defendants said the fire was caused was disallowed on the ground, as DUKE, P., put it, that the interrogatory was "of a vague kind intended by its general form to elicit information in the hope that it may furnish the plaintiff with proof of a cause of action not at present alleged or with information as to the defendant's information on matters not required by the rules to be pleaded by them, but probably capable of use at the trial."

So, again, in an action for damages for personal injuries caused by the fall of a piece of wood through the negligence of the defendant's servants, an interrogatory directed to discover through whose negligence the fall was occasioned, if it was not occasioned by the defendant's servants, was disallowed in *Meek* v. *Witherington*, 67 L.T.R. 122.

In running-down actions, *Griebart* v. *Morris*, 1920, 1 K.B. 659, may be regarded as one of the leading cases on interrogatories. Prior to that decision, the invariable practice was not to allow interrogatories except for very special reasons. *Griebart* v. *Morris* showed, however, that the previous practice was not correct and established the rule that the principles as to interrogatories which obtained generally applied equally to running-down actions, though no proper occasion for the administering of interrogatories as to the accident would arise in the majority of cases as both the plaintiff and the defendant would have their own witnesses on the point.

As SCRUTTON, L.J., pointed out in *Griebart* v. *Morris*, 1920, 1 K.B., at p. 666: "In most accident cases both parties are able to call witnesses, and therefore to interrogate upon small questions of fact relating to the details of the accident cannot be necessary for the fair trial of the action, and interrogatories should not be allowed. Nor should interrogatories be allowed for 'fishing' purposes or to obtain the names of the opponent's witnesses," although it should be noted that an interrogatory may be allowed as to the name of a person if it is material to the case: cf. *Marriott* v. *Chamberlain*, 17 Q.B.D. 154: "These considerations are probably sufficient to disentitle the party to interrogate in most accident cases. But there should be no other fetter."

In *Griebart* v. *Morris* the interrogatories sought to be administered by the plaintiff, who had been knocked down by a motor car while crossing the road after alighting from a bus, were directed in substance to the position of the bus and the car at the time of the accident, and the distance of the plaintiff from the omnibus and the car respectively and from either kerb.

The Court of Appeal held that the interrogatories were admissible having regard to the fact that the plaintiff had failed to discover with one possible exception any witnesses of the accident, and that she would have been obliged to rely for the details of the accident on her own memory, which was faulty and defective owing to the suddenness of the accident and to her having been seriously injured and rendered unconscious.

With *Griebart* v. *Morris* may be contrasted *Marshall* v. *Metropolitan District Railway Co.*, 7 T.L.R. 49. In that case the plaintiff, who was suing a railway company for damages for personal injuries, was not allowed to administer an interrogatory directed to ascertaining which of the company's servants saw the plaintiff at the time of the accident, and what the plaintiff's position then was, on the ground that no person knew the position of the plaintiff at the time of the accident better than the plaintiff himself, so that the plaintiff was virtually asking the defendants to tell him what his own evidence was, and the interrogatories therefore could not be regarded as "necessary for disposing fairly of the cause or matter."

In certain circumstances, moreover, a person who may be in a position to interrogate as to the details of the accident may also be allowed to interrogate as to any reports which were made to the defendants by his servants: *Jones* v. *London Road Car Co.*, 1883, W.N. 196.

From the point of view of a defendant in a running-down action, as he will ordinarily be barred from interrogating the plaintiff as to the details of the alleged accident if he has any witnesses of the occurrence whom he may call in support of his own case, the chief matters that it will be open to him to interrogate upon will be the injuries and the damage sustained. But it is important to note that strictly he is only entitled to interrogate upon these matters if he has admitted liability or paid money into court, or if he intends to pay money into court.

*Clarke* v. *Bennett*, 32 W.R. 550, may be regarded as the leading case on this point, and the law is very clearly stated by DAY, J., in that case as follows: "I do not wish it to be understood that interrogatories as to damages are never to be allowed—that is to say that interrogatories are never to be administered as to the damages claimed. That would be an inconvenient rule and none such has ever been laid down. The general impression that such interrogatories were inadmissible is due to the fact that when interrogatories were first allowed they were restricted to such matters as were open to discovery in equity and as damages were not so discoverable it was thought neither could they be interrogated upon, but I do not believe that interrogatories were so limited. There are a great number of cases in which they ought to be allowed, and cases have been decided to

that effect. But the cases such as *Wright* v. *Goodlake*, 13 W.R. 349, have generally gone upon the principle that such interrogatories should be allowed in order that facility should be given to defendants in actions for breach of contract to pay into court that which he should think justly due, and to prevent a plaintiff putting forward extortionate claims. Where such are put forward, it is clearly allowable for interrogatories to be put and practically such cases resemble those where money is paid into court. In many cases the claims cannot be known to the defendant and it is reasonable that he should be allowed to find out what are the damages so as to have an opportunity of showing them to be extortionate should they be so, or of knowing on what calculation such claims are based."

So again A. L. SMITH, L.J., said: "There has been no case quoted in which the defendant, having traversed all the plaintiff's claim, has been entitled to administer interrogatories as to the damages claimed before payment into court. By paying into court a certain sum a defendant impliedly does not traverse the whole of the plaintiff's claim and that raises an issue as to the amount of damages due on which he is rightly held to be entitled to interrogate."

Other cases to which reference may be made in which interrogatories as to damages were allowed are *Frost* v. *Brook*, 32 L.T.R. 312, where a useful form of interrogatories will be found in which case the defendants were willing to pay into court, and the avowed object of the interrogatories was to determine the amount to be paid in, and *Horne* v. *Hough*, L.R. 9 C.P. 135, in which case a sum had been paid into court and the question in issue was simply the amount of the damage suffered, the object of the interrogatories being to pay into court any further sum that might have been thought necessary.

It does not necessarily follow that if a party has failed to raise what would be a valid objection to an interrogatory on the hearing of the application for leave to administer interrogatories or if his objection has been overruled, that he will be precluded from raising the objection and refusing to answer the interrogatory in his affidavit. Ord. 31, r. 6, provides that "any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant or not *bonâ fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage or on any other ground may be taken in the affidavit in answer."

Thus, in *Peek* v. *Ray*, 1894, 1 Ch. 282, it was held that the allowance by a judge of interrogatories does not amount to a decision that a party is bound to answer them, but leaves him at liberty to take any objection to answering them which he might otherwise have taken, LOPES, L.J., saying: "It is contended that the learned judge by allowing interrogatories precludes the party interrogated from taking any objection to answering them. In my opinion that is incorrect. What the learned judge does when he allows the interrogatories, is this: he determines whether it is a case in which interrogatories ought to be delivered at all, and then under the new rules he deals with each interrogatory (he is bound to do that) for the purpose of seeing whether *primâ facie* and on the face of it that particular interrogatory is proper. That is what he does when he allows the interrogatory, but he does not preclude any objections being taken by the party interrogated when he files his affidavit in answer to interrogatories."

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

## Covenant not to Practise as a Solicitor.

THE construction of a covenant in a partnership deed entered into by solicitors, whereby the covenantor covenanted not to practise within a certain borough for ten years, was considered by the Court of Appeal in *Way* v. *Bishop*, 44 T.L.R. 571.

It was alleged in that case that a breach of the covenant had been committed by reason of the fact that the covenantor had entered into the service of another solicitor practising within the borough in the capacity of managing clerk.

The Court of Appeal, however, reversing the decision of CLAUSON, J., came to the conclusion that no breach of covenant had been committed.

The Court of Appeal pointed out that a covenant in restraint of trade must be strictly construed, and that the covenant in *Way* v. *Bishop* merely forbade the covenantor not to practise, and that there were no words in the covenant to the effect that the covenantor should not "either directly or indirectly be engaged in the business of a solicitor or as a managing clerk," a type of covenant that was common in partnership articles entered into between solicitors; and to hold that the covenant in *Way* v. *Bishop* prevented the covenantor from acting as a managing clerk was tantamount to rewriting the agreement which had been already made so that it might embrace within the single word "practice" a number of operations which were not necessarily included within it.

The Court of Appeal further expressed the opinion that in order to constitute a breach of the above covenant, it was necessary at any rate that the covenantor should actually be practising as a solicitor, i.e., should have taken out a certificate entitling him to practise, and probably further that the relationship of solicitor and client should actually have been constituted between him and a third person for whom he was acting.

Thus LAWRENCE, L.J., said: "The mere employment of a managing clerk, although he might be a solicitor and in a position to practise as a solicitor, did not constitute the clerk himself 'practising as a solicitor.' If he held a certificate which entitled him to practise it might be difficult to say in certain cases whether he was himself practising as a solicitor; but probably the test there would be whether the relationship of solicitor and client was constituted between him and the person for whom he was acting." So again, RUSSELL, L.J., said that in a covenant "practising as a solicitor" meant that the appellant "would not act as a solicitor in such circumstances that the relationship of solicitor and client would arise as between himself and the person whose affairs he was transacting." "Practising as a solicitor," the learned Lord Justice added, "connoted a person who was a principal who had clients and had a practice. The words were not applicable to describe the position of a person who was acting as a servant of another."

It may be of interest to contrast *Way* v. *Bishop* with *Palmer* v. *Mallett*, 36 Ch. D. 411. In the latter case it was held that a person acting as a surgeon was carrying on the profession of a surgeon, although he was acting as a salaried assistant to a surgeon who carried it on for his own benefit. It should be noted, however, that the covenant in *Palmer* v. *Mallett* provided that the covenantor should not at any time directly or indirectly and either alone or in partnership with or as assistant to any other person or persons carry on the profession or business of a surgeon; and further that in any case the position of a managing clerk who has not taken out a solicitor's certificate is relatively different from that of a person acting as an assistant to a surgeon.

### AT A SUBURBAN COUNTY COURT.

Solicitor: Do you admit owing the money?
Defendant: Needs must when the devil drives.

# A Wife's Breach of Covenant.

THE majority decisions in *Hymvn* v. *Hyman* and *Hughes* v. *Hughes*, judgments in which were delivered by the full Court of Appeal on the 18th inst. and are noted 72 SOL. J., *post*, p. 435, will be a landmark in matrimonial case law. Their effect is to uphold the judgment of Lord MERRIVALE in *Hughes* v. *Hughes*, who held that a wife, having entered into a deed of separation containing a covenant by her not to sue for further maintenance in excess of that provided under the deed, yet might on the subsequent dissolution of the marriage present a petition for permanent maintenance. But, whereas Lord MERRIVALE confined his judgment to the strict limits and peculiar facts of the case before him, the Court of Appeal considered and reviewed the law affecting agreements for separation from the early part of the last century. [Mr. Justice HILL in *Hyman* v. *Hyman* had held himself bound by the decision of the President in *Hughes* v. *Hughes* given on the day previous.] In the course of the inquiry seemingly conflicting decisions in the Court of Appeal in *Gandy* v. *Gandy*, 7 P.D. 168 and 30 Ch. D. 57, have been reconciled and old cases still adhered to in the text-books and relied on by practitioners e.g. *Charlesworth and Holt*, L.R. 9 Ex. 38, have been discredited. Lord Justice SCRUTTON particularly doubted whether this case, which decided that a covenant by a husband to pay an annuity to his wife "during their joint lives and so long as they should live separate and apart," continued in force, although the marriage had been dissolved by reason of the wife's adultery, could stand in the light of the subsequent "*Coronation Cases*."

Unfortunately the decision of the Court of Appeal is not unanimous, Lords Justices LAWRENCE and RUSSELL dissenting. The cleavage is strikingly indicated in the following passages taken from the judgments of Lord HANWORTH and Lord Justice LAWRENCE respectively :—

Per Lord HANWORTH, M.R.: The court cannot forego its duties, and it cannot be bound by an estoppel between the parties "for the jurisdiction in matters of divorce is not affected by consent. No admission of cruelty or adultery, however formal, can bind the court. The public interest does not allow the parties to obtain divorce by consent and the analogy of ordinary actions cannot be applied."

By parity of reasoning, a stipulation attempting to shorten the arm of the court by means of a covenant in a separation deed, when a marriage is subsequently dissolved by decree absolute, will also be ineffective.

Per LAWRENCE, L.J.: It is entirely contrary to equitable principles that a wife, after having accepted the benefits of a separation deed, should be allowed to repudiate her obligations under it, whether such repudiation takes place because she has obtained a decree for judicial separation or because she has obtained a decree for divorce. In either case she is approbating and reprobating a deed, a proceeding against which a Court of Equity has always set its face.

It is to be noted, however, that the effect of the judgments which have been upheld is only to allow the wife in the circumstances to present a petition for permanent maintenance, and that the legal incidence of the deed will have to be determined when the claim is heard, so that the equities of the case will still be in the guardianship of the court in the person of its Registrar, who will make the award.

CENTRAL DISCHARGED PRISONERS' AID SOCIETY.

By kind permission of the Treasurer and Benchers of the Honourable Society of the Middle Temple, a public meeting on behalf of The Central Discharged Prisoners' Aid Society (Inc.) Victory House, Leicester-square, will be held in the Middle Temple Hall on Thursday, 28th June, at 4.30 p.m. Mr. Serjeant Sullivan, K.C., will preside, and the other speakers will include Mr. Justice Charles, C.B.E., K.C., Miss Haldane, J.P., Mr. W. J. H. Brodrick, O.B.E. (Metropolitan Magistrate), and Mr. F. P. Whitbread (President). Invitation cards may be obtained on application to Mr. W. W. Jemmett, F.I.S.A., Secretary, at the address of the society.

# A Conveyancer's Diary.

**"Settled Land": Whether Held in Undivided Shares.**

Two points of interest were decided by Mr. Justice Tomlin, in *Re Robins*, 1928, W.N. 170. The first point was whether land, in the circumstances considered, was settled land which had not been affected by L.P.A., 1925, 1st Sched., Pt. IV, or whether it was land held in undivided shares vested in possession, and as such falling within Pt. IV, para. 1.

In the events which had happened the land was, immediately before 1926, held by trustees on trust during the life of the last survivor of the members of an ascertained class of persons to pay the income thereof to certain persons as tenants in common, and thereafter upon trust for sale. Tomlin, J., observed that the limitations in point were very similar to those in *Re Higgs & May*, 1927, 2 Ch. 249, and *Re Flint*, 1927, 1 Ch. 570, and that he could not see anything to justify him in coming to a different conclusion from that reached by Eve, J., in *Re Higgs & May*. On the contrary, uniformity was a desirable aim. Accordingly, he held the case to be governed by Pt. IV, para. 1 (1).

In the report the sub-paragraph applicable is referred to as sub-para. (3). This is obviously a clerical error or a slip. The land was vested in "trustees" within sub-para. (1). Hence, that sub-paragraph applied and not sub-para. (3): *Re Dawson*, 1928, 1 Ch. 421.

**Cost of Repairs: How borne as between Capital and Income.**

The second point considered in *Re Robins* was whether the cost of certain repairs to part of the property was to be borne by capital or by income. These repairs had apparently been executed and had been temporarily paid for out of the rents and profits until the matter could be brought before the court for approval.

L.P.A., 1925, s. 28 (1) (as amended), gives trustees for sale of land the powers of a tenant for life, and the trustees of the settlement under the S.L.A., including the powers of management conferred by that Act during a minority. One of those powers thus indirectly conferred on trustees for sale of land is the power to execute repairs and to pay the costs thereof out of the income of the land: S.L.A., 1925, s. 102 (1), (2) (*b*), (3).

The expressions used in s. 102 simply authorise trustees to pay for repairs out of income, that is, they are not obligations binding upon the trustees. And the words "after keeping down costs of repairs . . . and other outgoings," in L.P.A., 1925, s. 28 (2), do not seem to take the matter any further. Tomlin, J., interpreted the position in *Re Robins* as follows: The trustees had executed the repairs and made temporary provisions for their discharge out of income; being unwilling to exercise their discretion, they had then come to the court and invited its direction as to how the expenses ought to be borne between the parties. He distinguished *Re Robins* from *Re Gray*, 1927, 1 Ch. 242, where the court had refused to interfere after the trustees had chosen finally to pay for repairs out of income.

In the result the court had to tell the trustees how the expense of the repairs had to be borne, and in this matter certain governing principles had been laid down in *Re Hotchkys*, 1886, 22 Ch. D. 408.

In accordance with those principles, Tomlin, J., held that the repairs in *Re Robins* ought to be paid for out of capital. It seems fairly clear that where the repairs amount to an authorised improvement, the costs should be paid for out of capital.

It is difficult to follow the last remark reported to have been made by Tomlin, J., in *Re Robins*, namely, that in arriving at his conclusion he did not consider he was doing anything inconsistent with *Re Gray*. "The suggestion made," said Clauson, J., in *Re Gray*, 1927, 1 Ch., at p. 251, "is that,

notwithstanding the passing of these new Acts [the] equitable jurisdiction of the court still remains, that the right that the trustee had of coming to the court and getting authority to do the repairs has not been swept away, and that the court still has jurisdiction to deal with the costs of repairs in the way dealt with in *In re Hotchkys*. My view is that the Acts are intended, as far as possible, to be a complete code." And later he added (see p. 252) that he saw no reason why the court had to apply the general equitable principles which it had applied in *Re Hotchkys*.

It seems that Clauson, J., considered that a trustee should generally exercise his statutory discretion and not come to the court, except perhaps in cases where he had some doubt as to the way the discretion ought to be exercised.

The result of the two cases seems to be that trustees have a discretion (which, as a rule, they should exercise) to pay for repairs out of income, but if they consider in the circumstances and having regard to the nature of the repairs that the expenditure should be borne by capital, they should apply to the court for its leave to pay for them out of capital, unless the works are "authorised improvements," when the trustees will properly pay for them out of capital without coming into court.

**Joint Tenants Holding subject to a Family Charge.**

The Court of Appeal have upheld the decision of Clauson, J., in *Re Gaul & Houlston*, 1928, W.N. 45, discussed in 72 Sol. J., p. 130: see 1928 W.N. 166. The point at issue in effect was whether in the circumstances title should be made by trustees for sale, as the vendor contended, or under the S.L.A., 1925, as the purchaser claimed.

Immediately before 1926, the land was vested in two persons as joint tenants in fee simple, subject to a family charge. In 1926 trustees of the property were expressed to be appointed on the footing that the land, being held in undivided shares, had become subject to the provisions of L.P.A., 1925, 1st Sched., Pt. IV. These trustees had agreed in 1927 to sell the land, free, it seems, from the family charge. The purchasers objected to the title shown and claimed that the land was "settled land," for the purposes of L.P.A., 1925, s. 36, and so excepted from the application of the transitional provisions which made land held by joint tenants before 1926 subject to the statutory trusts.

The Court of Appeal agreed with Clauson, J., that "settled land" in s. 36 (1) means "settled land," under the new law, there being no context in the section requiring otherwise. Land subject to a family charge is "settled land" under the new law: S.L.A., 1925, ss. 1 (1) (v), 2. Accordingly s. 36 was inapplicable in the circumstances, the land remained settled land and the "vendors were not in a position to show a good title in themselves to sell the property."

The proper persons to make title were the original joint tenants (who were absolutely entitled subject to the family charge) in exercise of their powers as tenants for life within the S.L.A., 1925, s. 20 and after the execution of a vesting deed.

## Landlord and Tenant Notebook.

**Position of Landlord on Appointment of Receiver by Debenture-holders.**

We had occasion to consider, *ante*, p. 329, the right of a landlord to distrain where the lessee was a company which had gone into voluntary liquidation, and we shall now consider the position of the landlord where a receiver is appointed by the holders of debentures in a company.

It seems clear from the authorities that a landlord is not a secured creditor by reason of his power of distress. Thus Malins, V.-C. said in *In re Coal Consumers Association*, 4 Ch.D. at p. 629: "It is quite clear that a landlord with a right of distress is not a (secured creditor): such a right is not a mortgage charge or lien; it is simply a right to resort to the chattels on the land in the occupation of the tenant. And until the landlord exercises that right he has no security whatever." So again in *Thomas* v. *Patent Lionite Co.*, 17 Ch.D. at p. 257, Jessel, M.R., said: "The landlord is not a secured creditor, he has a power of distress, and when he has distrained different considerations arise; but his power of distress does not make him a secured creditor, he is a creditor who can prove for the whole of his demand . . . ."

Until a receiver has been appointed, the landlord, it seems, will have the power to distrain, and this right, if exercised before the appointment of the receiver, will be valid against the debenture-holders. This was, at any rate, the view of the Court of Appeal in *In re Roundwood Colliery Co.: Lee* v. *Roundwood Colliery Co.*, 1897, 1 Ch. 373.

Thus, in that case, Lindley, L.J. said, *ib.*, at p. 393: "It becomes necessary to consider the respective rights of the landlord and the debenture-holders to the goods seized. These rights depend on the question whether the landlord distrained while the debentures were still a floating security or whether the debentures are to be regarded as having definitely attached to the goods seized so that as between the landlord and the debenture-holders those goods had become the property of the latter before the landlord seized them . . . The distress having been made before the commencement of the winding-up and before a receiver was effectively appointed, was in my opinion valid as against the debenture-holders."

A further question arises whether in the case of a distress levied before the appointment of the receiver further proceedings on the distress can be taken after the appointment of a receiver. *Re Roundwood Colliery Co., supra*, seems to show that in such circumstances the landlord may proceed further with the distress by selling the chattels distrained upon.

Thus Stirling, J., in his judgment in the above case said: "The result, as I understand it, is this; that a creditor who has issued execution or a landlord who has levied distress before the commencement of the winding up [or before the appointment of a receiver, cf. per Lindley, L.J., *supra*,] will be allowed to proceed to sale unless there is established the existence of special reasons rendering it inequitable that he should be permitted to do so."

Does the fact of the appointment of a receiver prevent a landlord from exercising his power of distress? It seems from *Roundwood Colliery Co. Ltd, supra*, that a landlord may distrain even after the appointment of a receiver, but if he desires to take this course he must obtain the sanction of the court, for which purpose it will be necessary for him to satisfy the court that there are very special reasons for allowing him to do so. Thus Stirling, J., in the *Roundwood Colliery Co. case*, said, *ib.*, at p. 373: "The case of *In re Lancashire Cotton Spinning Co.*, 33 Ch. D. 656, shows that . . . a landlord who does not levy a distress until after the commencement of the winding up will not be allowed to proceed unless there are special reasons which render such a course inequitable."

## Our County Court Letter.

### ESCAPES OF GAS.

The liability of persons who discover the above by means of naked light was discussed in *Brooke* v. *Bool*, 1928, W.N. 127. The plaintiff was weekly tenant of a lock-up shop owned by

the defendant, who lived in adjoining premises communicating with the shop by means of a door. By reason of burglaries, the plaintiff had requested the defendant to examine the shop occasionally, but the visit giving rise to the claim for damages was due to a smell of gas. This had been noticed by the defendant's lodger, who lived upstairs, and the defendant and his lodger both entered the shop to investigate. There was a gas pipe leading down to a gas stove, and nothing happened when the defendant struck a match and lighted a burner in the lower length of the gas pipe. It was necessary to stand on the counter to test the upper length, and as the defendant and the lodger were aged seventy-nine and forty respectively, the lodger climbed on to the counter and struck one of his own matches, thereby causing an explosion in which he received serious injuries. Damage was also done to the stock-in-trade of the plaintiff, and her business was dislocated, as a result of which she sued the defendant for negligence. The county court judge at Westminster found that the explosion was due to the negligence of the lodger, and held that there was no evidence that he was the defendant's agent. If the Divisional Court should hold that there was any evidence, he would draw the inference that the defendant was liable, but in the meantime judgment was given for the defendant with costs. The Divisional Court reversed this decision, and held that the defendant was liable for the lodger's act on four grounds. Mr. Justice Salter based his judgment on (1) agency, as the defendant impliedly invited the lodger to finish the examination, and the maxim applied *qui facit per alium facit per se ;* (2) the control exercised by the defendant, as the lodger would have been a trespasser if he had not had the permission and invitation of the defendant to be present ; (3) the fact that the explosion was caused by the joint act in the course of a concerted enterprise of the lodger and the defendant. Mr. Justice Talbot based his judgment on (4) the principle that if work is done on the property of another, the person doing the work is liable to the owner of the property for damage done by failure to take proper care. The defendant had examined the shop for the protection of the plaintiff's property and of his own, and was equally liable whether the examination was by himself or by some one on his behalf. Judgment was therefore entered for the plaintiff.

The above case illustrates the widely varying circumstances which are governed by the same general principles. In support of ground (2) the cases quoted were *Wheatley* v. *Patrick*, 2 M. & W. 650, and *Samson* v. *Aitchison*, 1912 A.C. 844. These were both "running down" cases, in which the negligent person was driving by permission, without being the agent of the defendant, the latter being nevertheless held liable. Ground (3) was based upon *The Koursk*, 1924 P. 140, dealing with the position of joint tortfeasors. The "Koursk" and the "Clan Chisholm" had collided through separate and independent acts of negligence on the part of those in charge, and as a result the "Clan Chisholm" sank a third vessel. The latter's owners recovered judgment against the "Clan Chisholm" for part of the damage, and claimed the balance from the owners of the "Koursk." The defence was that a judgment against one tortfeasor barred an action against the other. Lord Justice Scrutton stated that tortfeasors are of three kinds ; principal and agent, a master and servant, and two persons who agree upon a common action, in the furtherance of which one of them commits a tort. Mr. Justice Salter held that the landlord and his lodger were in the third category. Among the cases quoted by Mr. Justice Talbot, in support of ground (4) was *Dalton* v. *Angus*, 6 App. Cas. 740. In dealing with rights of support, the House of Lords laid down that where a contractor does work dangerous to adjoining property, the employer is bound to see that proper means are taken to prevent injury, and cannot evade liability by employing a competent contractor and directing him to take precautions.

# Practice Notes.

## DIVORCE.

No process in the Divorce Division more frequently miscarries owing to flaws in procedure than a motion to attach or commit.

It has been said that the distinction between committal for contempt and attachment for contempt has been practically abolished, committal having been the proper remedy for doing a prohibited act and attachment the proper remedy for neglecting to do some act ordered to be done. *Vide* The Annual Practice, 1928, at p. 786.

This process is not applicable to enforce money orders other than those to give security, but can be employed to compel obedience to most others. Custody and molestation frequently provide the subject-matter, where a party has refused to give up a child in disobedience to a decree, and where an injunction not to molest has to be enforced.

The correct procedure is as follows : The order, disobedience to which is complained of, must have been served on the party in default, indorsed with a memorandum similar to or with the effect of the notice set out in Divorce Rule 79B, viz. : "If you the within-named (A.B.) neglect to obey this order by the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same." Then the notice of motion, which must state in general terms the grounds of the application, and should ask for attachment or committal in the alternative, must, together with any affidavit intended to be used in support, be served on the party in default four clear days before the hearing.

Service of the order and of the notice of motion and affidavits in support must be served personally unless by leave of the court.

The affidavit in support of the notice of motion should prove service of the order and that the copy served was indorsed with the penal notice and that there has been default.

And further *ex maxima cautela*, irrespective of the presence in court of the party in default, there should be an affidavit of service of the notice of motion and affidavits in support.

As Lord Bowen said : "Every subject has a right to say that he ought not to be put in prison unless every iota of the rules has been satisfied," and a litigant recently found himself in a ridiculous position after having received a communication from the party in default in the terms "I am waiting for you to send me to prison," when, owing to an omission in his procedure, he was powerless to do so.

## RATING OF LICENSED RESTAURANTS.

The above subject was considered in the case of *Davies* v. *West Derby Union Assessment Committee* at the last Liverpool Quarter Sessions. The appellants were lessees of the Oriel Restaurant, Water-street, and they appealed against the raising of their assessment from £300 gross and £270 rateable to £1,000 gross and £800 rateable. The only approaches to the restaurant were through a narrow court or from an upstairs block of offices, and the cellars were formerly used as cells in the days of the slave trade. A rent of £300 a year had been paid under a lease which expired in March, 1926, and the company which formerly owned the premises had declined to pay a higher rent. The manageress, having successfully created a valuable goodwill, had persuaded the appellants to take a new lease at a minimum rent of £1,200 a year, or 8 per cent. of the gross takings for the first year and 9 per cent. for succeeding years, if the returns increased. For the year commencing April, 1927, the assessment was raised to £1,250 gross and £1,000 rateable, but on objection was reduced to £1,000 gross and £800 rateable. That was a treble increase on the assessment existing since the general re-valuation in 1921-22, and the lessees therefore appealed on the ground of inequality in comparison with fourteen other restaurants. The appellants' case was that,

not only the landlord, but also the assessment committee, were taking advantage of the goodwill created by the manageress, and the increase in rent should not have been taken into account, nor did it entitle the committee to re-value the premises. The rates would be increased under the new assessment by £360 a year, and the license duty by £200 a year. A rating surveyor called by the appellants stated in cross-examination that in 1926-27 the gross takings were £22,233. The landlord received £1,778, the rates were £195, but the net profit was only £1,247. The appellant Davies stated that the manageress was paid £7 a week salary and half the net profit, but he would not have taken the lease had he known the assessment would be raised to that extent.

The case for the assessment committee was that, in taking as a basis the rent which a hypothetical tenant would pay, it was some guide that the appellants had agreed to pay between £1,200 and £2,000 a year for a long period. It was only by making allowance for the exceptional goodwill created by the manageress that the assessment was not higher, and a reduction would be unfair to other ratepayers. Evidence was given by the committee's surveyor that the Oriel was in an ideal position for the business community, and in cross-examination it was suggested that he had assumed that the trading results should be rated, apart from whether they were due to the tenant or to the site. The surveyor stated that the trade done was one of the elements considered, but it had not been followed blindly. The learned Recorder stated that he wished to hear no other evidence, and that he had taken into account the fact that the manageress had created a valuable asset. He may have taken that more fully into account by reason of his having expressed his disapproval of the present rating system—*e.g.*, being rated on one's own improvements. He considered that the assessment committee had behaved in a moderate and even generous way and the appeal was therefore dismissed with costs, but he declined to state a case as to whether the committee were justified in re-valuing the property, as the litigation might be costly although the legal position was clear.

### SAFETY PRECAUTIONS IN MINES.

Before the magistrates at Ebbw Vale, on 24th May, the manager and under-manager of the Marine Colliery, Cwm, were each summoned on six charges for contravening General Regulation 4, under the Coal Mines Act, 1911, by failing to take representative samples of dust from the roof, floor and sides in various districts of the mine, for a distance of not less than fifty yards, between 1st January and 28th February, 1927. There were also two charges against each defendant of not taking samples sufficiently often. There had been an explosion in the night of 28th February—1st March, 1927, in which fifty-two men were killed, and the case for the Ministry of Mines was that, according to the statutory book kept for the purpose, samples of dust were taken either from the roof, floor, or sides of the mine, but not from all three, as required. It was submitted for the defence that the fact of entries not being in the book did not prove that samples were not taken, moreover, the heading in the book specified roof, floor, " or " not " and " sides. Evidence for the defence was given by the sample-taker, who stated that he understood from the heading in the book that he had done all that was required. There was great confusion in the office after the explosion, and the samples which had been there were not taken to the laboratory. The requirements as to entries having been pointed out to him, he had recorded each sample separately after February. The magistrates decided that a technical offence had been committed, but no conviction would be recorded on payment by each defendant of a guinea costs on each of the eight summonses.

Mr. A. E. Francis, solicitor (Messrs. Francis & Veneer, 106, Bishopsgate, E.C.2), has been elected Master of The Tin Plate Workers Company. Mr. Francis was admitted in 1896.

## Correspondence.

### Congress of the Association Nationale des Avocats inscrits aux Barreaux de France.

We have received for publication the following account of a meeting at Rheims of a French Congress at which there were present representatives of the English Bar:—

2, Garden Court, Temple, E.C.
12*th June*, 1928.

Dear Mr. Chairman,—The members of the bar who were deputed by the General Council of the Bar to attend the Congress of the Association Nationale des Avocats inscrits aux Barreaux de France, des Colonies, des pays de protectorat et de mandat which was held at Rheims on Thursday, the 17th May, and the following days, had a very pleasant experience as guests of the Association and met with the greatest kindness at the hands of their French confrères.

The English Bar was represented by Sir James Greig, C.B., K.C., Mr. Albert Crew, Mr. T. M. O'Callaghan, Mr. G. F. Kingham, Mr. H. T. Wright and myself.

Representatives of the legal profession from Belgium, Holland, Luxembourg, Czecho-Slovakia, Austria, Poland, Switzerland, Yugo-Slavia, Bulgaria, Argentina, the United States of America and Roumania were amongst the other foreign guests.

The programme of the Congress provided for meetings to discuss professional matters relating to the French Bar which were fully attended and gave rise to lively debates, presided over with admirable skill and judgment by Maître Appleton, the President of the Association.

The subjects discussed included legal education, the training of advocates, the institution of a diploma of fitness for advocacy by the Faculties of Law, the taxation of professional incomes, judicial reform and the extension of the jurisdiction of "*juges de paix.*"

The date of the Congress had been fixed to coincide with the reopening of the Palais de Justice, which had been destroyed partly by the German bombardment during the war and partly by a fire which broke out subsequently and destroyed almost all which had escaped the bombardment.

M. Barthou, the Minister of Justice and Garde des Sceaux, inaugurated the new building and delivered to the assembled lawyers, first an official speech couched in the rotund and sonorous phrases appropriate to the occasion, but followed with an informal speech full of charm and wit during which he mentioned that he would make it his business to see that the decoration of the Legion of Honour should be conferred upon the French judge who had continued the trial of a case while the shells of the enemy were falling on the building.

Another ceremony in which the lawyers of all the nations present took part was the laying of wreaths and crosses upon the tablet erected in memory of the members of the Rheims Bar who had fallen during the war and Sir James Greig, C.B., K.C., brought flowers on behalf of the English Bar. He also made a speech in French at the inaugural meeting on behalf of the English Bar which was much appreciated and indeed, quoted by the President of the Association in a subsequent speech.

A deep impression was made on all the visitors by the manner in which the City of Rheims is being reconstructed after the bombardment which left only some 15 houses undamaged out of 15,000 and many references were made during the Congress to the magnificent effort of reconstruction.

French hospitality is proverbial, and it would have been impossible anywhere to have organised entertainments more perfectly than those which were offered during the Congress. On the evening of the first day Maître Henri Robert of the Paris Bar, famous for his eloquence, gave a discourse worthy of his reputation. Indeed the speaking of the members of the French Bar on all the many occasions when speeches were

delivered appeared to be of a very high level and in admirable taste.

The Congress was given the opportunity of seeing during the daytime the work of restoration being carried on at the Cathedral, and Foyer Remois, a garden city equipped in the most modern manner, and some of the famous champagne cellars; whilst the entertainments included an evening at the Salle de l'Opera, where the old folk-songs of the old Province of Champagne and the old dances and costumes were reproduced.

Finally the Association and the foreign guests were invited to a magnificent banquet given by the Bar of Rheims, the Department of the Marne and the City of Rheims. On this occasion I responded in French on behalf of all the foreign guests present.

Maître Rosey, ex-Bâtonnier of Rheims, had also organised an expedition on the Sunday to see the battlefields and a luncheon was provided at the Château of a member of the French Bar, M. Dupont-Nouvion, which he told the assembled guests was the first entertainment there since it had served as the Head-quarters of the German Army during the attacks on Rheims.

It was felt by all the guests of the Association that the invitation to attend such a Congress as that of the French lawyers could only help to promote the good feeling between the members of the legal profession in all the countries concerned.

Yours sincerely,
R. E. L. Vaughan Williams.

To Sir Thomas Hughes, K.C.,
Chairman,
General Council of the Bar.

## Delay in Taxations.

Sir,—A matter of some urgency, to which I think attention might well be called through your valuable paper, is the increasing congestion of Bills in the chambers of the Taxing Masters of the High Court—particularly on the Chancery side. It is felt that urgent representations should be made to the Lord Chancellor not only to take steps to avoid future congestion, but to make special arrangements to wipe off the immediate arrears, and to secure that costs shall be taxed before the long vacation, where papers have already been lodged or are lodged during this month. Not only in my own case, but in that of several other firms of my acquaintance the present delays are proving a source of considerable embarrassment.

I might quote one instance where a Bill was lodged in January but no taxation has yet taken place!

Yours, &c.,
A Practising Solicitor.

London, E.C.1,
15th June.

## Landlord and Tenant Act, 1927: Registration of Right to New Lease.

Sir,—The important question raised under the head of "A Conveyancer's Diary" can rightly be answered in the way in which your valued contributor seeks the solution. The tribunal has absolute discretion to grant (or refuse) according to whether it determines "a new tenancy" to be "in all the circumstances reasonable." Apart from that uncertainty, the tenant may be satisfied by "a tenancy of other premises" under s. 6 of the Act.

Edwd. S. Cox-Sinclair.

London, E.C.4,
18th June,

# Reviews.

*Memories.* By Harry Preston. With a Portrait by Richard Sickert, A.R.A., and other illustrations. Demy 8vo., cloth boards, pp. xvii and 288. London: Constable and Co. 15s. net.

To the son of a solicitor belongs the distinction of writing one of the most delightful books of reminiscences published in recent years.

"Memories," by Mr. Harry Preston, "the uncrowned King of Brighton," sparkles with good things from preface to epilogue. It is a lovable human document, wherein the sunlight of fun chases the shadows of the pathetic throughout its revealing and self-revealing pages. It is a veritable mirror of Bohemian England for fifty years, and more. In it you catch vivid though fleeting glimpses of princes and peers, luminaries of the law, celebrities of society, leaders of literature and art, orators and preachers, figures famous in finance, idols of the stage, heroes of the ring and the playing-fields, and notabilities of the turf—portrayed with the fine lines of intimate personal knowledge. Sport and good comradeship are evidently the touchstone of Mr. Preston's magic circle. This is clear as soon as you glance at his very Dickensonian dedication:—

> "Every man who has a place in my heart and many have—belongs to an order which knows neither rank nor class nor creed nor distinction of calling—the unwritten order of good fellowship. Men! Men fond of a fight—in the ring or in life, a quip and a crank, a glass of good wine, song, merry company. Men of high heart, high spirits and high courage."

And there you have it! Whether he is with a prince or one of his many pensioners, with George Robey, or the Rev. R. J. Campbell, with Carpentier or the little boxer from Wales, whose wife thrills the company with Welsh hymns, with a patient in the hospital or the millionaire from whom he has first extracted £1,000 donation for some deserving charity, it is just the same natural kindly humourous Harry Preston. Which means that his book teems with anecdotes, in which the author is always laughing with and never at those with whom he walks or of whom he talks. And what a fund of generous praise he has for those who have helped him in the countless public charitable functions, he has organised, with a modest implication that his own initiative and hard work were of no importance! The tales he tells against himself with such boyish glee will endear him to the heart of the stranger and still further deepen the affection for the great little man which belongs to all those who have the joy of his friendship. Just take the tale of what happened to him and his friends in a Spanish City two or three years ago, owing to their monumental innocence of all things Spanish from its coinage to the architectural difference between the local cathedral which they were told to "do," and the local lunatic asylum. Mr. Preston won much at a casino, and the bankers gave him counters to be exchanged at the office. But the author thought the counters were real coins of the Spanish realm. The following day starting out for the cathedral the party were driven by mistake to the madhouse. A major-domo in carpet sleepers and as self-important as Malvolio, and a devout little nun graciously showed "the foreign grandees" all the strange sights, with copious explanations which the visitors did not pretend to understand, and with vigorous gesticulations which Mr. Preston thought he fully appreciated. So much so, that he gave his pious guides much largess from his ample funds of casino counters! What a pity that in the sequel the errors were rectified!

Last year Mr. Preston was invited to a wonderful dinner in London and presented with a silver salver by about a hundred people of light and leading in the life of the land from the Prince of Wales downwards. While the dinner was in progress a motor-cyclist was despatched to Brighton with a

bracelet for Mrs. Preston. Mr. Preston tells us that the messenger returned before the evening was spent with a letter of thanks from Mrs. Preston addressed to the chairman, with this postscript: "I am especially happy to-night, because for once I know where Harry is."

It is certainly a book which all "sportsmen" in the very real sense should acquire. H.

*Public Health Law.* Being a Manual for Town Clerks, etc. SYDNEY G. TURNER, Barrister-at-Law. Second Edition. By JOHN HODSON, B.A., LL.B., Barrister-at-Law. pp. xlvii and 235 (with Index). St. Brides Press, Ltd. 15s. net.

No branch of law is being so rapidly and so copiously added to by legislation as that of Local Government. The pages of THE SOLICITORS' JOURNAL and their frequent reprints bear eloquent testimony to that fact. To keep abreast of the volume of new statutes turned out yearly, and to discharge their onerous administrative duties, is a task of ever-increasing difficulty for the responsible officers of our local governing bodies to-day. A reliable but handy guide, where accurate information can be readily obtained, is therefore more than ever necessary.

The authors of "Public Health Law" have gone far to meet this need. Whilst it is an admirable epitome of the laws with which they deal, this work in no way pretends to supplant the monumental tomes on local government like Lumley, Macmorran, or Glen, to which reference will always be made where exhaustive consideration has to be given to a complicated problem of municipal law. In this, the second edition, there are introduced valuable and helpful chapters on Housing and Town Planning. The relevant Acts down to 1926 are also included, and the case law to date has been carefully noted. It is a good little book for its purpose and can be cordially commended. H.

*The Business Tenant.* A Guide to the Law as to Compensation for Goodwill and Improvements under the Landlord and Tenant Act, 1927. By EDWARD S. COX-SINCLAIR and THOMAS HYNES, LL.B., of Gray's Inn, Barristers-at-Law, joint authors of "Land Values." pp. xviii and 243 (with Index). London: Sir Isaac Pitman & Sons, Ltd. Price 7s. 6d. net.

The Landlord and Tenant Act, 1927, with its numerous sub-clauses and provisoes, cannot be described as "light reading." The authors of this book, however, have set out in a series of "practical notes" on the Act the effect and scope of its provisions in so lucid a fashion that "he who runs may read," even though he may be a layman. Whether or not such an one can safely undertake to apply the measure to his own particular case without skilled advice and assistance is another question.

The far-reaching character of the Act is pointed out in the Preface. "No class of tenants (except tenants of the employed type holding by way of part remuneration for services rendered); no class of tenancies, except when the holding is wholly for residential, agricultural, or mining purposes, can be said to be completely excluded from the scope of the Act. Even statutory tenants (that large body of persons who hold by virtue alone of the provisions of the Rent Restrictions Acts, and hold only during the duration of those Acts) are within the definition and protection of the Act." The authors are at pains to justify this latter, important, conclusion by arguments.

The observance of the times and periods prescribed in connexion with proceedings by tenants or landlords under the Act is of vital importance, and in this connexion the "Time Table of Proceedings" included in the work will be found most helpful. The table, or rather tables (for there is a whole series) cover the various eventualities or circumstances which may arise under the Act.

Apart from the valuable and suggestive "Practical Notes" on the various provisions of the measure, the most useful feature of this work is the inclusion of a series of carefully drafted forms for the use of both landlords and tenants. These forms, properly used, would enable a (skilled) layman to manage his own case. They will also be of material service to the practitioner.

The full text of the Acts and of the recently issued Rules of the Supreme Court and County Court are set out in full; and the book is furnished with a good index and the usual preliminary tables.

It is clear that the learned Authors have given much care and thought to their task. They have succeeded in writing a book which should appeal to lawyer and layman alike. It constitutes a valuable contribution to the new branch of landlord and tenant law arising out of the Act. H.

## Books Received.

*The Lawyer and Banker, Central Law Journal.* A journal for Corporation Lawyers and Title men. New Series, Vol. XXI. May-June, 1928. No. 3. The Lawyers and Bankers Company, 921-927, Lafayette-street, New Orleans, La. 75 cents.

*The Criminal Lawyer* (a monthly periodical). Vol. 1. May, 1928. No. 1. King & Co., Law Publishers, Post Box No. 1, Parvatipuram, Madras Presidency. Annual subscription (foreign) 10s.

*The Business Tenant.* A guide to the Law as to Compensation for Goodwill and Improvements under the Landlord and Tenant Act, 1927. EDWARD S. COX-SINCLAIR, and T. HYNES, Barristers-at-law, joint Authors of "Land Values." 1928. Demy 8vo. pp. xviii and 243 (with Index). London: Sir Isaac Pitman & Sons Limited. 7s. 6d. net.

*Mercantile Law Summarised.* A series of Notes for the Examination Student. NEVILLE TRUMAN, A.C.A. Demy 8vo. pp. ix and 126 (with Index). 1928. London: Gee & Co. (Publishers) Limited, 6 Kirby-street, E.C.1. 7s. 6d. net.

*The Law relating to Innkeepers.* C. C. ROSS, M.A., Barrister-at-law. Crown 8vo. pp. xv and 155 (with Index). 1928. The Solicitors' Law Stationery Society Limited, 22 Chancery lane, W.C.2; 27 & 28 Walbrook, E.C.4; 49 Bedford-row, W.C.1; 6 Victoria-street, S.W.1; and 15 Hanover-street, W.1. Liverpool: 19 & 21 North John-street. Glasgow: 66 St. Vincent-street. 6s. net.

*Super-Tax Tables.* 1928-9. H. J. GULLY, F.C.A. 43 pp. 1928. London: Gee & Co. (Publishers) Limited, Kirby-street, E.C.1. 2s. 6d. net.

*The Enforcement of Foreign Judgments.* W. VALENTINE BALL, O.B.E., A Master of the Supreme Court. (Reprinted from THE SOLICITORS' JOURNAL). 1928. The Solicitors' Law Stationery Society Limited, 104-7 Fetter-lane and Branches. 2s. net.

*White & Tudor's Leading Cases in Equity.* With Notes. 9th Edition. E. P. HEWITT, K.C., LL.D., and J. B. RICHARDSON, M.A., LL.B., Barrister-at-Law. In two vols. Medium 8vo. Vol I: Administration—Legacies. pp. cxiii and 788 (with Index). Vol. II: Mortgage—Waste. pp. cxliii and 1072 (with Index). 1928. Sweet & Maxwell, Ltd., 2 and 3, Chancery-lane, W.C.2. £4 10s. net.

*Cases in Akan Law.* Decisions delivered by The Honourable NANA. Sir OFORI ATTA, K.B.E., Omanene (Paramount Chief) of Akim, Abuakwa; King's medal for African Chiefs; Member of the Legislative Council, Gold Coast. With Introduction, Synopses and Notes, J. B. DANQUAH, B.A., LL.B. (Lond) (Odehye of Adadentum), of the Inner Temple, Barrister-at-law. Author of "Akan Laws and Customs." 1928. Demy 8vo. pp. xxxii and 288 (with Index). George Routledge & Sons Limited, Broadway House, 68-74 Carter-lane, E.C. 10s. 6d. net.

# POINTS IN PRACTICE.

**Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.**

### Banker and Customer.

1283. *Q.* We act for a bank who have a trust account standing in the name of two trustees; one trustee has recently died. We should be obliged if you would inform us if the bank are safe in honouring cheques drawn by the surviving trustee without inspecting the deed creating the trust. Section 22 of the T.A., 1893, gives power for the surviving trustee to act (unless the contrary is expressed in the instrument, if any, constituting the trust). In s. 18 of the T.A., 1925, these words restricting the power of the surviving trustee are omitted. By s. 69 of the Act of 1925 (2), it states that the powers conferred by the Act are in addition to the powers conferred by the instrument creating the trust, and are subject to the terms of the instrument creating the trust. We are not clear as to whether s. 69 (2) should be read in conjunction with s. 18, more especially in view of the fact that s. 18 (3) states that that section is subject to restrictions as regards receipts by a sole trustee, but makes no mention of it being subject to any trust instrument. We should be much obliged if you could let us hear from you as regards this at an early date.

*A.* The question here raised appears to narrow down to the question whether a statutory power on the true construction of the Act giving that power would be held to override the express provisions of a trust deed excluding such power, i.e., as to whether the fact that the T.A., 1925, empowers a surviving trustee to act, prevents the operation of a clause in a trust deed which says that a single surviving trustee is not to act in the matter in question. As stated the question appears to answer itself. It would seem clear that if the legislature intended to prevent the effective inclusion in a trust deed of limitations upon the powers of a sole surviving trustee, it would have said so and not have left it to be inferred from (*a*) the fact that statutory powers are given to a surviving trustee, and (*b*) the fact that the words present in an earlier Act, viz., "unless the contrary is expressed in the instrument, if any, constituting the trust," are left out. But apart from the above considerations, s. 69 (2) of the T.A., 1925, expressly provides that the statutory powers are controlled by the terms of the trust instrument. Such a provision clearly makes unnecessary in s. 18 of the Act of 1925 the words "unless the contrary is expressed in the instrument, if any, constituting the trust," present in the s. 22 of the Act of 1923. Section 69 (2) controls the whole Act and *inter alia* s. 18. As, without inspection of the trust deed, it cannot be seen whether the powers conferred by the trust or the statutory power conferred on a sole surviving trustee are expressly cut down by the terms of the instrument creating the trust; and as, if they are so cut down, the statutory powers *primâ facie* possessed by the sole surviving trustee may not at all be, in fact, so possessed, or may not be possessed in respect of the power in question, it would appear to be safer to require inspection. The bank has notice of the existence of the trust instrument and accordingly constructive notice of its contents. If it therefore contains a restriction against the sole surviving trustee signing cheques or otherwise operating the trust account at the bank, and the bank pays cheques so signed, the bank would be liable to the trust if, as a consequence of the payment of the cheque, the trust suffered a loss owing, e.g., to the trustee absconding with the money so withdrawn. It would be no defence to rely on statutory powers for, as we have seen, such statutory powers do not avail against the express provisions of the trust instrument.

### Agricultural Holdings Act, 1923—Effect of Notice to Quit on Proposed Sale.

1284. *Q.* By lease dated the 29th September, 1922, a farm was let for a term of seven years from the 29th September, 1921, to 29th September, 1928. In accordance with s. 23 of the above Act the landlord served upon the tenant a year's notice to quit expiring on the 29th September, 1928. Will it be safe for the landlord to enter into a contract to sell the farm during the currency of the said notice to quit, in view of s. 26 (1) of the said Act, or must he wait until the notice to quit has expired? Section 26 refers to a tenant from year to year.

*A.* Under s. 26 (1) only tenants from year to year are in a privileged position as regards the avoidance of notice to quit by a subsequent agreement of sale by the landlord. There is nothing in the Act to extend this privilege for the benefit of a lessee for a term of years, and as the landlord in the above case has complied with s. 23, he can safely enter into a contract to sell the farm during the currency of the notice to quit.

See "Everyday Points in Practice," pp. 291-294.

### Furnished Tenancy and Dilapidations.

*Q.* 1285. We have a case in which a landlord is suing for dilapidations after the expiration of a furnished tenancy. The property let is described as "All that furnished dwelling-house situate and being known as No. 15, Blank-street with the garden and other appurtenances and also the furniture, fixtures and effects therein as per inventory." The tenant agrees "to keep the said furniture, fixtures and effects clean, and in as good condition and repair as they are now in," etc., etc., but there is no corresponding provision as to keeping the dwelling-house itself in proper condition. The damage includes injury to the building—e.g. broken windows and floor-boards, ink-stained walls, etc. We think we are right in saying that in the absence of express provision, there is an implied term that a tenant shall use the demised property in a tenant-like manner; the point we should like to raise is whether the term which might otherwise be implied as regards the building is excluded by the express provision as regards the contents? In some instances the inventory of furniture contains a note as to the condition of the room in which the furniture is placed; do you consider that this affects the position in any way? Authorities would be helpful.

*A.* The implied term that a tenant shall use the demised premises in a tenant-like manner is stated in "Woodfall," 21st ed., at p. 755. This implied term is not excluded by the express provision as regards the contents, as the latter is inserted to extend to the contents that which would otherwise only apply to the building. The notes in the inventory as to the condition of the rooms were evidently inserted for the protection of the tenant, and their existence pre-supposes a liability of the tenant to repair damage. Authorities are: *Proudfoot* v. *Hart*, 1890, 25 Q.B.D. 42, as to the meaning of good tenantable repair in a three years' lease; *Lurcott* v. *Wakely*, 55 Sol. J. 290, as to liability under a general covenant to repair an old house; see also the Landlord and Tenant Act, 1927, s. 18, which extends to implied covenants to repair.

### Sheriff's Fees and Poundage.

*Q.* 1286. A issues a writ against B to recover a debt of £40. B sends A a cheque for the debt, leaving the costs outstanding. A's solicitors sign judgment for the costs and issue execution. The Sheriff's Officer seizes some household effects which are

claimed by the wife of B. B is a builder and the day following the seizure of the goods executes a deed of assignment. It appears from his statement of affairs that B has stock and tools of trade of the estimated value of £70. A's solicitors have not admitted the title of B's wife and interpleader proceedings are pending. The Sheriff's Officer claims the following fees :—

| | £ | s. | d. |
|---|---|---|---|
| Poundage .. .. .. .. .. | 0 | 8 | 0 |
| Levy fee .. .. .. .. .. | 1 | 1 | 0 |
| Mileage .. .. .. .. .. | 1 | 0 | 0 |
| Inventory fee .. .. .. .. .. | 1 | 11 | 6 |
| Possession fees—nine days .. .. .. | 3 | 16 | 6 |

(1) Is it considered that there is any negligence on the part of the Sheriff's Officer in not seizing some of the stock and tools of the debtor to satisfy the execution ?

(2) Are all the fees charged properly payable ? There appear to be no mention in the Sheriff's Act, 1887, table of fees of poundage or inventory fee.

*A.* (1) Unless the warrant mentioned the builder's yard as an address, as well as the defendant's house, the Sheriff's Officer would not seize the stock and tools. In any case goods must only be taken sufficient to satisfy the claim and costs, and if this was done there can be no claim for negligence.

(2) The above fees are authorised by an order of the judges, dated 31st August, 1888. See " Mather on Sheriff and Execution Law," 2nd ed., p. 620, Item 7, and foot-note *c*.

**Married Woman**— Name—Claim to have Transfer of Shares registered by her, described as a Spinster.

*Q.* 1287. A married woman has lodged a transfer of stock for registration with our clients, who are a gas company, incorporated under its own Act of Parliament. In the transfer she described herself as a spinster, and refuses to have the transfer altered, she has produced her marriage certificate. We are desirous of knowing whether we can advise the company to refuse registration of the transfer, on the grounds that it contains a false description of the transferor. The value of the amount of stock to be transferred is about £500.

*A.* A marriage confers a status upon a woman, and also confers upon her the name of her husband which becomes her actual name, unless she has obtained another by reputation, see *Fendell* v. *Goldsind*, 1877, 2 P.D. 263, the company would appear to be justified in refusing registration of the transfer in the form offered.

**Expenses** " Necessarily Incurred."

*Q.* 1288. Is an articled clerk entitled to relief from payment of income tax upon amounts expended by him in respect of : (*a*) Stamp duty on articles ? (*b*) Law Society fees for examinations, etc., and tuition fees ? X is a clerk, in receipt of a salary, articled to a firm of solicitors, and claims to be entitled to be relieved from payment of tax upon payments made by him in respect of the above on the ground that they fall within the provisions of the Income Tax Act, 1918, Sched. E, r. 9, as money expended wholly, exclusively and necessarily in the performance of his duties, or alternatively (so far as (*a*) is concerned) under r. 1 of the same schedule as a sum payable under an Act of Parliament (i.e., the Stamp Act, 1891, Sched. 1). The claim under (*a*) is divided into three equal annual instalments over the period of articles. The inspector of taxes relies upon the fact that there is no provision in the Income Tax Acts for any such allowances and has been asked to refer the matter to the commissioners. Is X entitled to claim relief in respect of the above payments or either of them ? Authorities will oblige.

*A.* No. The sums referred to are not expended wholly, exclusively and necessarily by X in the performance of his duties as an articled clerk, the remuneration from which employment forms the subject of assessment under Sched. E. X has become an articled clerk with the view to entering a certain profession and the fees for the Law Society examinations are paid to qualify him for that profession and not to assist him to carry on his duties as an articled clerk. With regard to the stamp duty, this is clearly capital expenditure which cannot be charged against revenue. The stamp duties are payable " under the Act " before the subject becomes an articled clerk. The reference under r. 1 relates to superannuation and similar deductions.

**Will**—Devise—Residence to Wife for Life—How best Framed.

*Q.* 1289. A testator desires his wife to have the use of a certain house after his death so long as she makes it her principal place of residence, she keeping it in repair and paying rates, etc. After the wife's death or cesser of occupation the property is to fall into residue which is held on trust for sale in the usual way. (*a*) What is the simplest way of effecting this without making the property settled land ? (*b*) If the devise is so framed as to make the property settled land in whom would it vest on the death or cesser of occupation of the wife, if : (1) no vesting assent in her favour had been executed ; and (2) a vesting assent had been executed ?

*A.* Under the new legislation the alternative choice is presented of settlement by way of trust for sale, or under the S.L.A., 1925, and there is no third cause if successive interests are to be enjoyed. Further, both under the S.L.A., 1882 to 1890 and the S.L.A., 1925, a condition attached to a gift of a residence for life of forfeiture of benefit on non-residence is, so far as it fetters the free exercise of the powers of a tenant for life, contrary to their policy, and to that extent void : see authorities collected and discussed in the answer to *Q.* 780, p. 387, vol. 71. And similarly, a condition tending to fetter trustees' powers on a trust for sale is void : see *Re Flint*, 1927, 1 Ch. 570. Therefore, whichever alternative is chosen, the testator, although possibly he may make residence a condition precedent for his wife's beneficial interest, cannot prevent either her or the trustees, as the case may be, exercising their statutory powers of leasing or selling. It may be added, however, that a settlement under the S.L.A., 1925, would at least prevent the statutory powers being exercised against the widow's will. In either case the widow, if in residence, would normally pay rates, taxes and other outgoings. In answer to the specific questions put : (*a*) The only alternative is settlement upon trust for sale, as above ; (*b*) (1) and (2). The execution or non-execution of the vesting deed is not a material factor. If the land remains settled land probate or administration is granted in respect of it to the special personal representatives under the A.E.A., 1925, s. 22 (1), or J.A., 1925, s. 162 (1) (*b*), as the case may be. If it ceases to be settled land the grant goes to the general representatives in accordance with *Bridgett* v. *Hayes*, 1928, 1 Ch. 163.

**Executor**—Transfer of Mortgage to Residuary Legatee and Devisee—Conveyancing Act, 1881, s. 30.

1290. *Q.* A sole mortgagee who died in 1900 by his will appointed A and B executors and trustees thereof, and, without making any express devise of mortgage estates to them, devised and bequeathed to them all his residuary realty and personalty upon trust for sale. A died in 1905, having alone proved the mortgagee's will (B renouncing), and by his will appointed C and D his executors. In 1907, E and F were duly appointed trustees of the will of the mortgagee in place of A and B by W, to whom the power of appointment was given by the will of the mortgagee. By a transfer, of even date with the appointment, C and D assigned the mortgage debt and conveyed the mortgaged estates to E and F upon a recital that they were entitled in equity. The mortgage was paid off prior to 1926, E and F giving a receipt for the mortgage money and reconveying the property. It is suggested that the transfer to E and F was ineffective, at any rate to vest the legal estate in E and F. Is this view correct ?

*A.* The legal estate in the mortgaged property became vested in A (Conveyancing Act, 1881, s. 30), but the residuary bequest was effective (subject to the assent of A) to pass the mortgage debt to A and B. We are of opinion that A and B or their successors in office, E and F, were certainly entitled to call for an assignment of the mortgage debt, and if they were entitled to this assignment, they were, in our judgment, entitled also to a conveyance of the legal estate.

The better opinion appears to be that Pt. I of the Land Transfer Act, 1897, does not affect s. 30 of the Conveyancing Act, 1881.

Had the legal estate been outstanding in the manner suggested, it is submitted that it would have been got in by L.P.A., 1925, Sched. I, Pt. II.

**Intestacy**—Cousins Taking.

1291. *Q.* An unmarried man died intestate after 1925. No parents, grandparents, brothers, sisters, uncles or aunts survived him, but there were cousins living at the date of the death. Do these cousins represent their deceased parents (who would as uncles or aunts have taken the estate, if living) and take the estate, or is the relationship too remote; and for such cousins as are dead, do their issue take an interest, and is the division *per stirpes* each uncle or aunt?

*A.* The relationship of first cousin is not too remote, as the issue of uncles and aunts represents them in *infinitum* (A. of E.A., 1925, s. 46 (1) (v) and s. 47 (3)), taking in all degrees according to their stocks. Thus the children of an uncle will divide the share the uncle would have taken, and the children of any deceased child of that uncle will divide the share that deceased child would have taken.

It will be remembered that vested interests are not attained until the age of twenty-one or prior marriage.

**Intestacy**—Sale Subject to Curtesy—Settlement.

1292. *Q.* A died intestate in 1911 leaving a husband, B, and son and heir-at-law, C (then an infant), surviving. B took out letters of administration to A's estate in 1911. A owned freehold land in which B now has an estate by the curtesy. C now wishes to sell part of the freehold lands to D and E, subject to B's estate. D and E desire the land to be settled so that D takes a life interest subject to B's estate and E takes the absolute interest subject to the life interests of B and D. It is desired to keep the trusts off the title. What deeds will be necessary to carry out the transaction? No assent has been made by B as personal representative of A.

*A.* A minimum of two documents is necessary, and, as regards the settlement, a "trader's settlement" seems the more convenient. We suggest the documents should take the following form:—

(1) The conveyance upon trust for sale.

*Parties.*—(1) B, (2) C, (3) D and E, (4) Two (or more) trustees.

*Recitals.*—Intestate death of A leaving husband (B) and son (C) surviving, curtesy of husband, heirship of son (C), letters of administration, agreement for sale by C to D and E, desire of B, D and E that the property should be assured to and held by the trustees upon trust for sale and that the proceeds of sale are to be held upon trusts of deed of even date. That there has been no assent or conveyance by B.

*Operative part.*—(1) Conveyance by C to D and E of his equitable interest—purchase money paid to C with privity of B.

(2) B at request of D and E conveys legal estate to the trustees upon trust for sale.

(3) Declaration that proceeds are to be held upon trusts of deed of even date.

(4) Power to appoint new trustees vested in B, D and E jointly and the survivors and survivor of them.

(5) Indemnity of D and E against death duties on B's death.

(6) Acknowledgment by B as to documents, including letters of administration.

(7) Certificate of value, if applicable.

(2) The contents of the deed declaring the trusts are obvious.

**L.P.A., 1925, s. 34**—Form of Conveyance to Purchaser.

*Q.* 1293. A certain Emma Hoyle, a widow, died on the 17th October, 1926, and at the date of her death owned a leasehold house. She left a will (dated 25th February, 1919) worded as follows: "This is the last will and testament of me Emma Hoyle of —— I devise and bequeath all the estate and effects whatsoever and wheresoever both real and personal to which I may be entitled or which I may have power to dispose of at my decease unto my five children —— absolutely as tenants in common in equal shares and I appoint my daughter, the said —— and my son the said —— to be the executors of this my will. In witness etc." Her executors are now selling the house to my client and I am acting for both parties. I have prepared an assent by the executors assenting to the vesting in themselves of the house "Upon trust to sell the same with power to postpone the sale and to stand possessed of the net proceeds of sale upon the trusts on which the same ought to be held as forming part of the estate of the said Emma Hoyle." I propose to ante-date such assent to about November last year, i.e., to about the end of "the executors year." In the draft deed to the purchaser I have recited (*a*) that the said Emma Hoyle "duly made her Will dated the 25th day of February, 1919, and (*inter alia*) thereby appointed the vendors to be her executors," just that as I understand that the attempted bequest to tenants in common ought to be kept off the title; (*b*) the death and seisin of said Emma Hoyle; and (*c*) the assent. Then I propose to make the vendors sell as trustees for sale under the assent. Will the above be sound conveyancing and effective?

Would a better way be to recite (*a*) the will in full; (*b*) that all testamentary expenses have been paid; and (*c*) that by virtue of s. 34 of the L.P.A., the personal representatives have become trustees upon the statutory trusts?

*A.* We do not think that any useful purpose is served by attempting to keep the devise to the tenants in common off the title, though, in view of s. 36 (7) of A. of E.A., 1925, the purchaser can safely assume that the assent upon trust for sale was in order. There is no necessity to ante-date the assent in the manner suggested. We prefer the later method suggested, but if the later method is adopted we consider that an assent by the executors to themselves upon the statutory trusts is necessary. There seems no reason, however, why, if the state of administration justifies the course, the executors should not sell as personal representatives without further complication, and in this connexion the detailed provisions of A. of E.A., s. 36, should be considered.

**Administration**—Conveyance by Executor to one of Several Beneficiaries with the Approval of All.

*Q.* 1294. J.D. appointed E.H.D. and E.E. to be the executors and trustees of his will, including trustees thereof for the purposes of the S.L.A., 1882 to 1890. He devised "All my real estate (Blackacre) unto and to the use of my wife G during her life, and after her death unto my trustees upon trust that my trustees shall sell the said real estate and hold the proceeds arising from such sale in trust for my children and grandson hereinafter named in equal shares as tenants in common, namely my daughter M, my son J, and my daughters, L, K and N, and my grandson T." The testator J.D. died in January, 1923, and E.H.D. proved the will in June, 1923, power being reserved to the other executor E.E., who has never acted in the trust. The widow G died in January, 1928, intestate, and no letters of administration have been applied for. At the date of the widow's death all the beneficiaries M, J, L, K, N, and T were over twenty-one. The beneficiaries and E.H.D. have now agreed to sell the

testator's real estate to one of themselves, viz., J. Your advice is required as to how the transaction can be effected and by whom is the conveyance to be made? Please refer to precedents.

*A.* On the assumption that E.H.D. assented by conduct or otherwise prior to 1926 to the devise to G for life and over, the legal estate on 1st January, 1926, became vested in G (L.P.A., 1925, Sched. I, Pt. II, para. 6 (*c*)). The settlement terminated with the death of G (*Re Bridgett and Hayes' Contract*, 71 Sol. J. 910). Application must be made for a general grant in the estate of G, no limited grant being possible. The beneficiaries other than J should then assign on sale their equities to J, after which and if desired by the same document, the administrator of G, will at the request of J convey the legal estate to him. We cannot trace a precedent exactly in point, but the deed should present no difficulty.

**Mortmain**—Parochial Church Council—Gift of Freeholds.

*Q.* 1295. A client is desirous of leaving by will two houses to the parochial church council of the parish in which he resides for the express purpose of the said council letting the houses and paying the net rentals arising therefrom to the parish church restoration fund. Having regard to the Mortmain and Charitable Uses Act, 1891, it would appear that, notwithstanding anything in the will to the contrary, the property would have to be sold within one year of the testator's death, or would vest in the Official Trustee of Charity Lands and the necessary steps taken to sell same. Is there any way in which the testator can prevent the property being sold? Would it be effective for the testator to direct his executors to sell the property and hand the proceeds of sale over to the parochial church council for the income to be applied for the purpose above mentioned? Reference to the appropriate forms of bequests of the property and/or the proceeds of sale in the Encyclopedia of Forms and Precedents, 2nd. Ed., or in Prideau, 22nd Ed., will be appreciated.

*A.* It is not possible to give exact effect to the client's wishes. If the testator is willing to make the gift to the Ecclesiastical Commissioners, the property need not be sold (Mortmain and Charitable Uses Act, 1888, Pt. III, s. 8 and 14 and 15 Vict., c. 97, the effect of which is to render the Ecclesiastical Commissioners outside the usual mortmain regulations in respect of gifts for, *inter alia*, repairing churches). If this course is adopted, the Commissioners should be communicated with and the exact form of devise agreed. It is considered that the parochial church council has no power to hold lands at all, except with the consent of the Diocesan authority in whom the legal estate must be vested, and then only if required for parochial ecclesiastical purposes (Parochial Church Councils (Powers) Measure, 1921). Even if the property could effectively be given to the council upon trust for sale, or if it was given to the executors upon trust for sale, it would have to be sold within a reasonable time, *Re Sidebottom*, 1902, 2 Ch. 389, though the Mortmain and Charitable Uses Act, 1891, does not apply to devises upon trust for sale.

**Landlord and Tenant Act, 1927**—Charge under s. 12—Priority.

*Q.* 1296. Does the charge, obtained by a mortgagor who, though barred from leasing without consent, has leased to a tenant to whom he subsequently pays compensation, under the Landlord and Tenant Act, 1927, have priority over the mortgage?

*A.* The opinion is expressed that such a charge does obtain priority in view of the wording of s. 4 of the 1st Sched. to the Act of 1927. It is not considered that the fact that the lease was irregular affects the position. We suggest that the mortgagor should be pressed to assign his charge to the society as further security. We think it is beyond doubt that the interests in the reversion immediately expectant on the termination of the lease include the mortgage term.

**Trustees**—Minimum number required to grant Lease.

*Q.* 1297. A is the sole surviving trustee under the will of X. The testator left real estate, but it is not known whether the will of X created a settlement of a trust for sale. B is desirous of taking a lease of certain of the real estate, but doubts A's ability to grant a lease without first appointing a second trustee. What is B's position in each of the following cases?

(1) If A is the sole surviving personal representative.

(2) If the will of X created a trust for sale and A is the only surviving trustee.

(3) If the will created a settlement and A is the only surviving trustee of the settlement.

*A.* (1) A sole surviving personal representative can exercise the powers of leasing given by the S.L.A., 1925 (A. of E. Act, 1925, s. 39), and could act alone even if capital money arose upon the transaction (L.P. (Amend.) Act, 1926, Sched., amendment to L.P.A., 1925, s. 27).

(2) A sole trustee for sale also has the powers of leasing of a life tenant under S.L.A., 1925 (L.P.A., 1925, s. 28), and can act alone if capital money does not arise, but if capital money, e.g., a fine, arises, there must be at least two trustees.

(3) The trustee of a settlement has in general no power to lease if the life tenant is of full age.

**Mortgage**—No Reconveyance prior to 1926 though paid off—Vesting of Legal Estate.

*Q.* 1298. Blackacre was mortgaged in 1895 by A.B. to C.D. to secure £200. By a series of further charges between 1895 and 1910 the principal sum then due to C.D. on the security of the mortgage and further charges amounted to £720. In 1912 A.B. conveyed the equity of redemption in Blackacre subject to the mortgage and further charges to E.F. This was the position down to 1919, when E.F. sold about three-quarters of Blackacre to G.H. C.D. joined in the conveyance, and as there was sufficient purchase money the full principal sum of £720 owing on the mortgage and further charges was paid to him, and in the conveyance he acknowledged to have received this total principal money and concurred to release the three-quarters of Blackacre from the mortgage. In 1920 E.F. sold the remainder of Blackacre to I.J. This was an absolute conveyance in which E.F. is recited as being seised free from incumbrances. A memorandum was placed on the conveyance of the equity in 1912 of the sale of the three-quarters of Blackacre in 1919, and this memorandum states that E.F. was seised of the remaining quarter. It appears that the remaining quarter of Blackacre was never actually reconveyed by C.D. and this is the position to-day. The question is, what is the best thing to be done to-day to put the matter right, if anything at all is necessary? Do you think we could rely upon Pt. II of the 1st Sched. to the L.P. Acts, 1925, to bring in the outstanding estate (if any), or do you think it would be as well for a receipt to be endorsed on the mortgage deed signed by C.D. acknowledging that he has received all moneys intended to be secured by the mortgage and further charges, such receipt being in the wording required by the L.P.A. or otherwise? It appears to me, however, that such receipt might have some effect on the conveyance of 1920, in that that conveyance contains a recital of seisin, and that the vendor conveys as beneficial owner.

*A.* It is considered beyond doubt that, on the 1st January, 1926, the legal estate, by virtue of L.P.A., 1925, Sched. I, Pt. II, para. 3, vested in I.J. The only action that appears necessary is to secure, for the benefit of I.J., evidence that all principal money and interest were in fact paid to C.D. prior to 1926. The memorandum endorsed on the conveyance of the equity of redemption, even if it mentions the payment of all principal and interest, is not adequate evidence. The statutory declaration of C.D. as to the facts would be satisfactory. We do not recommend the endorsement of any form of receipt by C.D. on the mortgage deed.

**Right of Drainage**—Special Condition.

*Q.* 1299. The owner of two adjoining freehold houses called A and B recently died, and his executors offered the houses for sale by auction, and both were sold to different purchasers. The owner himself occupied house A until his death, and he let house B to a tenant. The conditions of sale provided that the houses A and B, in addition to the outgoings and obligations set out in clause 19 of the General Conditions of 1925, are also sold subject to and with the benefit of all privileges and easements in the nature of light, air, water, drainage, way, etc., and all other privileges, easements and advantages in the nature of easements, as now or lately held, enjoyed or suffered by the tenants or occupiers of each house in common with the tenants or occupiers of the other house; and without liability on the part of the vendors to define the said privileges, advantages and easements, and the purchaser of each house to contribute a due proportion of the cost of maintaining, etc. anything so held, enjoyed or suffered in common. Shortly after the sale it was ascertained that the drainage of house A is carried into a cesspit on land sold with house B, and the purchaser of house A claims that he is entitled to continue to discharge the drainage in that way. The words of the sale aondition do not appear to be applicable to a drain used for house A only, and it is suggested that the right to drain ought to have been expressly reserved, if it was to continue. Will you please advise on the rights of the two purchasers as regards the drainage.

*A.* It is agreed that the special condition is not applicable as there is no common user of the drain. We express the opinion that the purchaser of house A can rescind, but that the purchaser of house B could be compelled to complete with compensation. Our reasons are, that in the case of house A the purchaser failed to obtain what he expected to obtain, namely, a house with a drainage system, while the purchaser of house B did obtain substantially what he expected to get.

**Settled Land**—Death of Tenant for Life—Settled and Unsettled Reversions—Title.

*Q.* 1300. X, who died in 1905, devised all her freehold property to the trustees, the survivor of whom is Y, upon trust for her husband, Z, for life, with remainder (*a*) as to Blackacre upon trust for her sister, A, for life, with remainder to latter's son, B, absolutely, and (*b*) as to Whiteacre, upon trust for her sister, C, for life, with remainder to latter's daughter, D, absolutely, (*c*) as to Greenacre, upon trust for her sister, E, for life, with remainder upon trust for the latter's daughter, F, for life, with remainder for G (the daughter of F) absolutely. The husband, Z, died long before the recent Acts. As to Blackacre, B (son of A) sold his reversion to his mother A. A died long before the recent Acts, and by her will devised Blackacre to her sister, E, for life, with remainder to H absolutely. E died after the passing of the Property Acts. As to Whiteacre, C, long before the Property Acts, purchased the life interest of Z, and the reversion of D. C is still alive. As to Greenacre, E, as before mentioned, has died since the Property Acts, and the remainders on her death now come into operation.

(1) What steps should now be taken to put these several titles into order?

(2) Is Y, who is apparently nothing more than a bare trustee, liable to account for the estate or other duties which may have become payable on the several deaths?

The whole of the estate of X was under £1,000.

*Q.* (1) Blackacre. This land on 31st December, 1925, was subject to the settlement made by A's will, and therefore on 1st January, 1926, the legal fee simple vested in E by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*). On E's death, the land no longer being settled, the grant in respect of it goes to her general personal representatives according to *re Bridgett & Haye's Contract*, 31 Sol. J., 910. They must pay or provide for death duties and assent in favour of H, see A.E.A., 1925, s. 36 and S.L.A., 1925, s. 7 (5). Whiteacre vested in C in fee simple on 1st January, 1926, under the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*d*). Greenacre vested in E on 1st January, 1926, in fee simple as tenant for life. Since it remains settled land the grant goes to the special representatives under the A.E.A., 1925, s. 22 (1), or the J.A., 1925, s. 162 (1), according as E died testate or intestate. They will pay or provide for death duties and make a vesting assent or conveyance in favour of F under the S.L.A., 1925, s. 7 (1) and 8 (4).

(2) Y, as trustee of X's will is not concerned with any of the properties. If he is the sole surviving executor of X, he is her special representative in respect of Greenacre under the S.L.A., 1925, s. 30 (3), with the duty of appointing someone to act with him. If he acts he must account for the duty on Greenacre. F and G can supersede him if they please under s. 30 (1) (v).

**Trustees for Sale**—One of Two Contracts to Sell—Issue whether Other Bound.

*Q.* 1301. A testator, who died in 1917, appointed J and M to be his executors and trustees, and devised real estate to his trustees, upon trust to sell it, with power to postpone sale, and also with power, pending a sale, to demise it for 1,000 years on ground rent. J, without the knowledge of his co-trustee, has entered into a contract to lease a plot of the trust land to builders. The contract, which was prepared by a surveyor, is expressed to be made between J of the one part and the builders of the other part, and is drawn on the footing of J's being the absolute owner of the land. It contains a provision that the lease shall be prepared by the solicitors of the lessee at the expense of the lessee, of which J was ignorant when he signed the contract. The solicitors acting for the lessee contend that this provision means that they are to act for both the lessee and the lessors, and they decline to agree to our suggestion that they shall prepare the lease, and that we shall peruse it on the lessor's behalf, and that our costs shall be fixed at the sum which a lessee's solicitor would be entitled to charge in an ordinary case, and be paid by the lessee. It is the custom here that, in default of agreement to the contrary, a lessee pays both his own and the lessor's costs. Your opinion is requested as to:—

(1) Whether J is bound by the contract, the land not being his own.

(2) Whether M is bound by the contract.

(3) Whether the lessors' costs are payable by the lessees.

(4) The proper course for our clients to adopt.

*A.* (1) and (2). M is certainly not bound by a contract entered into by J in respect of the trust estate without M's approval, see (if authority is needed for such a proposition) *Luke* v. *South Kensington Hotel Co.*, 1879, 11 C.D. 121, pp. 125-6. J is bound by the contract if the builders did not know that he had no power to enter into it, and is in the ordinary position of a person contracting to sell land, who cannot show title—unless, of course, M chooses to adopt the contract, with or without modification.

(3) Yes.

(4) Possibly J is bound by the agreement to employ the lessees' solicitors, though it is arguable that this is an *à fortiori* case of the veto contained in the L.P.A., 1925, s. 48. But, however this may be, M is not bound, and, if he adopts the contract, should do so with the variation that he should exercise his choice of his own solicitor. The opinion is here given that to bind himself to abdicate that choice would be a breach of trust. The deed must of course be settled on behalf of the trustees.

**Will**—Settled Land—Direction for Accumulation of Income during Life of Annuitant—Payment after Death of Annuitant to Persons entitled in Undivided Shares—Death of Annuitant—Title.

*Q.* 1302. A, by his will dated 1907, appointed B and C his executors and trustees. He gave an annuity free of duty to

S.L. for life. He also devised certain property to his trustees, upon trust after receipt of net rents and profits to apply so much thereof as should be sufficient for payment of the annuity and payment of repairs, and to accumulate the surplus during the life of S.L., and after her decease upon trust for sale and division (as to net proceeds and accumulations) between A's four grandchildren equally. A died in 1908, and his will was duly proved by B and C. The youngest grandchild attained twenty-one in June, 1915. There have been assignments or mortgages by all the four beneficiaries in regard to their shares. The tenants of the property (a limited company) purchased a one-fourth share in September, 1923, two-fourths shares in 1926, and the remaining fourth share in August, 1926. The shares in the property were in each case conveyed to the company as purchasers "in fee simple or absolutely," but subject to the annuity, and subject also to the one-fourth or two-fourths, as the case might be, of any duties payable on death of S.L., and the expenses which the trustee might incur in winding up A's estate. C died in May, 1927, and S.L. has just died, and the company, as purchasers of all four shares, will be liable for duties and expenses as stated above. It is suggested that there should now be a further deed of a confirmatory nature from B vesting the property in the company in fee simple.

(1) Is this strictly necessary?

(2) If such deed is prepared (whether strictly necessary or not), can you advise as to precedents?

(3) (*a*) Can it be said that the legal estate is still in B, or

(*b*) Has the legal estate become vested in the company on the death of S.L.?

(4) Does s. 1 (v) of S.L.A., 1925, apply to this case? If it does, it is assumed that special representation will be necessary and appointment of another trustee.

If the answer to (4) is in the negative, is B alone able to convey the legal estate, if still in him?

(5) We assume it would not be necessary for the beneficiaries to join in any deed?

*A.* The direction to accumulate income during the life of S.L. was void under the Thellusson Act, 1800, until it was repealed by the L.P.A., 1925, 7th Sched., and continued so under s. 164 of the latter Act, but, under each statute, was and is *primâ facie* good for the period of twenty-one years after a testator's death, a period not exceeded in this case. There is another reason, however, why the direction for accumulation was here void, namely, that, after the youngest grandchild came of age, the persons in whose favour the accumulation was directed were all *sui juris*, and, on the doctrine of *Saunders* v. *Vautier*, 1841, 4 Beav. 115, might require payment of the income accruing notwithstanding such direction. The four grandchildren thus became tenants *pur autre vie* (the life of S.L.) in undivided shares after 1915, and on 31st December, 1925, the trustees held the property in trust, subject to the annuity, to pay one-quarter to the company, i.e., three-quarters to the grandchildren who had not then assigned their shares, equally. This being so, a somewhat difficult question arises whether the land was "settled land" within the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (3), having regard to *re Ryder & Steadman's Contract*, 1927, 1 Ch. 509, in which it was held that "settled land" in that paragraph meant "settled" within the S.L.A., 1882 to 1890, and not within the S.L.A., 1925. The charge of the annuity did not in itself make the land settled land within the former Acts, as it does now within s. 1 (1) (v) of the latter Act. However, if the trustees for sale are regarded as taking in succession after the interests *pur autre vie* within the S.L.A., 1882, s. 2 (1), the land was settled land within para. 1 (3), *supra*, and B, as trustee of the settlement within s. 205 (1) (xxvi)—see S.L.A., 1890, s. 16 (ii) and *re Catchpole*, *ante*, p. 226—holds on trust for sale, with, of course, the necessity of appointing a co-trustee if he sold, to give receipt. If, on the other hand, the true view is that the four grandchildren were entitled absolutely subject to S.L.'s annuity, the same result would come about under para. 1 (1), see *re Myhill*, 1928, 1 Ch. 100. Since 1st January, 1926, the company has become entitled absolutely in equity and can require B to convey to them under s. 23. In answer to the questions: (1) Yes, the company will not obtain the legal estate otherwise. (2) This will be a simple conveyance on the recital that B holds, in the circumstances, upon trust for the company absolutely. (B, however, before conveying, should pay or provide for the death duties arising on the cesser of S.L.'s annuity.) (3) (*a*) Yes. (*b*) No. (4) No, because, before the commencement of the Act, the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1) or 1 (3), had applied, ousting the operation of the S.L.A., 1925, s. 1 (1). B can convey, as above. (5) No.

**Conveyance of Freeholds**—Effect of Affirmative Covenants.

*Q.* 1303. Can the burden of the affirmative covenants of a purchaser in a conveyance of freeholds be made to run with the land?

*A.* Affirmative covenants of this nature are in gross only, that is to say, personal to the covenantor, and do not bind subsequent purchasers with or without notice, even if expressed to be entered into by the covenantor and his assigns: *Austerberry* v. *Corporation of Oldham*, 1885, 29 Ch. D. 750. The position is not affected by s. 79 of L.P.A., 1925. To make affirmative covenants run with the land the relationship of landlord and tenant must be created by the assurance of a long term in lieu of the fee simple. A device, to attempt to ameliorate the position, would be to insert a covenant by the purchaser that the property should never be sold without imposing on the successive purchasers a covenant, to the effect of the affirmative covenants, so framed as to be not only a covenant with the actual vendor from time to time but also a separate covenant with the original owner, who though not a party to the various assurances could take the benefit of the separate covenants: L.P.A., 1925, s. 56.

**Mortgage**—Sale under Statutory Power to Mortgagor.

*Q.* 1304. Can a mortgagee sell under his statutory power of sale to one of three joint tenants, or tenants in common, who together mortgaged the fee simple to him prior to 1926?

*A.* Such a sale, if *bona fide*, is in order; the principle of the decision in *Kennedy* v. *De Trafford*, 1897, A.C. 180, being unaffected by L.P.A., 1925. It is not necessary in this connexion to consider the effect of the transitional provisions of that Act on the mortgage.

**Joint Tenants in Law**—Undivided Shares in Equity—Death of Owner of Moiety—Title.

*Q.* 1305. A and B, who were sisters and spinsters, purchased a dwelling-house on the 26th of February, 1925, providing the money in equal shares and mortgaged the same to a building society. The conveyance is to A and B as joint tenants. B died intestate in 1926, and her father died intestate last year. Please advise what is necessary to put the title of A in order. I take it A could convey at any time without the personal representatives of B joining in, but the point also arises as to whether A would have to account for the balance to B's personal representatives on a sale. It should also be pointed out that A is paying the subscriptions to the building society, and although there is no intention of a sale at the present time the point is raised merely to satisfy other members of A's family.

*A.* A and B held, in equity, as in law, in joint tenancy on 31st December, 1925, see *Aveling* v. *Knife*, 1815, 19 Ves. 441. The Building Society therefore took the term of 3,000 years under the L.P.A. 1925, 1st Sched. Pt. VII, para. 1, on 1st January, 1926, and A and B were joint tenants in fee simple. A can therefore sell alone, see s. 36 (2) as amended by the L.P.(Am.)A., 1926, Sched. B's next-of-kin have no interest.

# NOTES OF CASES.

## Court of Appeal.

**Smith, Hogg & Co. Limited** *v.* **Louis Bamberger and Sons.**

15th June.

SHIPPING—CHARTER-PARTY—DISCHARGE OF CARGO "ALONGSIDE THE STEAMER"—CHARTERER'S RISK AND EXPENSE "AS CUSTOMARY"—DISCHARGE ON TO QUAY AND INTO LIGHTERS—CUSTOM OF PORT OF DISCHARGE—PORT OF LONDON—INCIDENCE OF EXPENSES OF DISCHARGE—RESPECTIVE OBLIGATIONS OF SHIPOWNERS AND CONSIGNEES OF CARGO.

Appeal from a judgment of Wright, J. (44 T.L.R. 320). The plaintiffs, who were shipowners, claimed to recover from the defendants, who were the consignees of a cargo of timber, the sum of £102 9s. 3d., in respect of the discharge of a quantity of timber from the plaintiffs' steamship "Fernhill" at the Surrey Commercial Dock, London. The s.s. "Fernhill" was chartered in 1926 on the Merblanc (White Sea) Charter form. It was provided that "the ship shall load a full and complete cargo of deals and/or battens and/or ends, etc., and proceed to a safe port (which was ultimately fixed as London), and there deliver the same. Cargo to be discharged with customary dispatch, but according to the custom of the respective ports. The cargo to be brought to and taken from alongside the steamer at charterers' risk and expense as customary. The "Fernhill" carried timber under sixty-three bills of lading, a number of which were held by the defendants. Timber goods at the Surrey Commercial Dock were discharged in two ways: (1) on to the quay; and (2) over the side into lighters. The plaintiffs pleaded that the defendants did not take the cargo from "alongside" the steamer, and that, in consequence, they (the plaintiffs) carried the cargo to and stowed it in the usual place at the docks for discharged timber at a cost of £102 9s. 3d. The defendants contended that they were under no liability in respect of the money claimed by the plaintiffs, because by the custom and practice of the Port of London the shipowners were under the obligation to bear all the costs of the unloading on to the quay and of the delivery over side into lighters and stowage therein. The custom in the Port of London with regard to discharging on to the quay was substantially as follows: The cargo for the quay was discharged continuously and stacked on the quay by the ship's gang, at the ship's expense, into two large stacks, one opposite the forward holds, one opposite the after holds. These stacks come up to the edge of the quay, and project over it towards the ship some three to five feet. In respect of the lighters the custom was for the ship's men, at the ship's expense, to lower the cargo over side and stow the cargo so as to fill the lighters with reasonable stowage.

WRIGHT, J., held, as respects the cargo delivered on to the quay, that the cargo was "alongside" when it was available for release from the ship's slings, if discharged by the ship's tackle, or if discharged by hand, when laid with one end on the quay and the other resting against the ship, and the obligation of the consignees to take from "alongside" began, and they became liable for all expenses from that moment. With regard to the cargo discharged into lighters, the custom relied on by the defendants was not inconsistent with the terms of the charter-party, and might be relied on by them as showing that the act of delivery was completed only when the cargo was stowed into the lighters, so that the consignees' obligation began only after such stowage.

The defendants appealed against the decision with regard to the discharge on to the quay; and the plaintiffs cross-appealed against the decision in so far as it related to the cargo discharged over side into lighters.

The COURT (SCRUTTON, GREER and SANKEY, L.JJ.) held that the decision of Wright, J., in so far as it related to the work on the quay, must be reversed and the custom of the Port of London must be held applicable to the charter in this case. The shipowners (the plaintiffs) must be held bound to do the work, specified in the custom (namely, stack the timber in the quay, almost touching the ship), at their own expense. The custom which had prevailed in the Port of London for over twenty-five years was unaffected by the decision of the House of Lords in *The Turid*, 1922, 1 A.C. 397. With regard to the cargo discharged into lighters the defendants' contention was right.

Appeal allowed. Cross-appeal dismissed.

COUNSEL: *Raeburn*, K.C., and *James Dickinson*; *Le Quesne*, K.C., and *Sir Robert Aske*.

SOLICITORS: *William A. Crump & Son*; *Botterell & Roche*, for *Botterell, Roche & Temperley*, West Hartlepool.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

**Hyman** *v.* **Hyman. Hughes** *v.* **Hughes.**

Lord Hanworth, M.R., and Scrutton, Lawrence, Greer, Sankey and Russell, L.JJ.

22nd, 23rd and 26th May and 18th June.

DIVORCE—APPEAL—SEPARATION DEED—COVENANT BY WIFE NOT TO SUE FOR FURTHER MAINTENANCE—SUBSEQUENT DISSOLUTION OF MARRIAGE—COVENANT NO BAR TO PRESENTATION OF PETITION FOR MAINTENANCE.

These two appeals from decisions of Mr. Justice Hill and Lord Merrivale, respectively (72 SOL. J., 271, 272), raise the same question of law as to whether a wife who had entered into a deed of separation in which she has covenanted not to sue for further maintenance beyond the amount provided for in the deed, may, notwithstanding, on subsequent dissolution of the marriage, present a petition for permanent maintenance.

Lord HANWORTH, M.R., in the course of his judgment, said the President had noted in *Hughes* v. *Hughes* the peculiar circumstances under which the covenant had been entered into; for it was in a suit for divorce *a mensa et thoro* in Ireland, where there was no procedure for divorce except by Act of Parliament. The President therefore thought that no covenant in a deed could have contemplated the complete severance of the relationship of husband and wife, and that the wife could not be held to have covenanted not to do what she now sought to do. He held that she was not debarred from seeking relief "under a statute applicable to her present plight" not formerly contemplated. He also thought that if there were really a bargain by the wife not to sue her husband that would be evidence of collusion if he should subsequently be guilty of adultery. Thus, the basis of the President's decision in *Hughes* v. *Hughes* did not apply to *Hyman* v. *Hyman*. His lordship, in reviewing the cases cited, which treated of agreements providing for the separation of spouses, said that the principle of those decisions was that provisions for the disruption of married life ought to be discouraged, but a deed of separation regulating the terms on which the spouses could live apart was good. In *Marshall* v. *Marshall*, 5 P.D. 19, a wife was held bound by her covenant not to sue for restitution of conjugal rights. In *Besant* v. *Wood*, 12 Ch. D. 605, Sir George Jessel took the same view, and also held that the husband was not disabled from enforcing his wife's covenant by reason of trifling breaches on his own part. The recognition of covenants in deeds of separation was carried to a high point in *Charlesworth* v. *Holt*, L.R. 9 Ex. 38, where the Court of Exchequer enforced a covenant by a husband to pay the wife an annuity "during their joint lives and so long as they should live separate and apart," although the marriage had been dissolved by reason of the wife's adultery. The plea that adultery as a bar was held bad, affording no answer to the action by trustees of the deed to enforce the husband's liability. That decision, however, was in 1873; it appeared

to conflict with more recent decisions, and it was, perhaps, doubtful whether the court would decide in the same way to-day. Three cases involving the question whether covenants in a deed of separation affected the right to apply for permanent alimony came before Sir James Hannen, and in all of them he decided that the order for maintenance could be made on the usual basis. They were *Benyon* v. *Benyon*, 1 P.D. 447; *Morrall* v. *Morrall*, 6 P.D. 98; and *Gandy* v. *Gandy*, 7 P.D. 77. In *Benyon* v. *Benyon* the petitioner was the husband. His wife had covenanted in a deed to allow him £100 per annum. The marriage was dissolved, and he petitioned the court for a larger payment out of his wife's income. Sir James Hannen allowed him £300 per annum for life. The objections on the score of the previous covenant were overruled on grounds which were affirmed later in *Gandy* v. *Gandy*, the court in *Benyon* v. *Benyon* relying on the change of conditions between the time when the parties were living apart under the agreement and the time when they were no longer husband and wife. The next case, *Morrall* v. *Morrall*, was decided in 1881. The wife there had covenanted to accept certain sums for her support, and not to sue for further maintenance. The marriage was dissolved on the ground of the husband's adultery; that adultery being with the wife's niece, and so giving the wife a right to divorce on that ground alone. Sir James Hannen thought that she was entitled to maintenance in spite of her covenant, because a state of things was "not in contemplation when the deed was executed, and the wife is not restrained by the deed . . . circumstances now justify her in bringing a suit for dissolution of marriage, and she is entitled to all the incidences of that suit." Then came the case of *Gandy* v. *Gandy*, and Sir James Hannen applied his own reasoning in *Benyon* v. *Benyon*, and held that the acceptance of a sum in a deed of separation did not disentitle a spouse to enforce a larger claim based on new circumstances not contemplated when the deed was executed. That judgment was reversed in the Court of Appeal, 7 P.D. 168, but attention was called to the fact that the decree was for judicial separation and not for dissolution, and Lord Justice Lindley said that therefore: "The power of the Divorce Court over these deeds is much less than it would be after a decree for dissolution of marriage. It is a much more restricted jurisdiction and power, and it appears to me that the cases, of which *Morrall* v. *Morrall* is one, where the Divorce Court has dealt with separation deeds after decrees for dissolution of marriage, are rather misleading when they are applied or sought to be applied in a case where the court has no such extensive jurisdiction."

Thus, although *Morrall* v. *Morrall* was referred to, there was no suggestion that it had been wrongly decided.

Observations to the same effect were made by Sir Francis Jeune in *Bishop* v. *Bishop* and *Judkins* v. *Judkins*, 1897, P. 138. In *Wilkinson* v. *Wilkinson*, 69 L.T. 459, the same judge made an order for maintenance, and neglected a covenant in a deed on the same grounds as those expressed in *Morrall* v. *Morrall*. In *Bishop* v. *Bishop* and *Judkins* v. *Judkins* the cases to which he (the Master of the Rolls) had referred were discussed, and the then President had called attention to the fact that the reasoning of the Court of Appeal in *Gandy* v. *Gandy* had emphasised the difference in the power of the court when dealing with cases of divorce and cases of judicial separation, and added that in his opinion the decision in *Gandy* v. *Gandy* appeared not to reverse, but to approve the decision in *Morrall* v. *Morrall*. The President, therefore, held that the court could set aside a previous agreement and do complete justice between the parties. A similar decision was given in *Judkins* v. *Judkins*, although the suit was for judicial separation. In the Court of Appeal all the cases were cited and considered. The two decisions in *Gandy* v. *Gandy*, 7 P.D. 168 [1], and 30 Ch. D. 57 [2] were reconciled, Lord Justice Lindley saying that it was important to consider whether the Divorce Court had decreed a judicial separation or a dissolution of marriage. In his summary of the effect of the first decision in *Gandy* v. *Gandy*, he stated expressly that "nothing was decided respecting any of the statutory powers of the Divorce Court in suits for dissolution of marriage," and laid it down that *Bishop* v. *Bishop* must turn on "the power of the Divorce Court on a dissolution of marriage to compel a husband to provide for his divorced wife, and to make orders for the maintenance and education of the children." It was interesting to see the historical survey of the court's duties given in *Churchward* v. *Churchward*, 1895, P. 7. The court could not forego its duties, and it could not be bound by an estoppel between the parties, "for the jurisdiction in matters of divorce is not affected by consent. No admission of cruelty or adultery, however formal, can bind the court. The public interest does not allow the parties to obtain divorce by consent, and the analogy of ordinary actions cannot be applied." By parity of reasoning, a stipulation attempting to shorten the arm of the court by means of a covenant in a separation deed when a marriage was subsequently dissolved by decree absolute would also be ineffective. The appeals would, therefore, be dismissed with costs.

Scrutton, Greer and Sankey, L.JJ., delivered judgments in agreement with that of the Master of the Rolls.

Lawrence, L.J., in the course of a dissentient judgment, said: Dealing first with the case of *Hyman* v. *Hyman*, the separation deed contained no covenant that the parties would live apart in chastity and no such covenant would be implied (see *Fearon* v. *Earl of Aylesford*, 14 Q.B.D. 792). In the present case, the separation deed was clearly intended to operate after the termination of the marriage as the estate of the husband was, in the event of his pre-deceasing his wife, to pay the annuity to her during her life, so that the deed could not be said to be based on the continuation of the marriage tie. In *Fearon* v. *The Earl of Aylesford*, the principle that no condition would be implied restricting liability under an express covenant, was considered in the Court of Appeal, and the court declined to imply a provision restricting the liability of the husband to a liability so long as the wife should remain chaste. Equally, that principle applied in cases where it was sought to limit the application of a covenant to such time as the marriage tie should continue to subsist (see *Goslin* v. *Clark*, 12 C.B. (N.S.) 681 and *Charlesworth* v. *Holt*, L.R. 9, Ex. 38). In his judgment the principle of those cases was applicable to the present case, and as indicated in *Fearon* v. *The Earl of Aylesford*, the operation of the covenants ought not to be restricted on the ground that they were said to be against public policy. In his view, the wife's covenant was not intended to be limited to the duration of the marriage. The question whether she could disregard her covenant on obtaining a divorce was one of general importance. It was said that to hold the covenant inviolable was against public policy. It could not be said, however, that the deed was entered into with the object of regulating the position of the spouses in the event of a divorce. The most that could be said was that the spouses had not inserted a provision terminating the wife's covenant on dissolution. He could not see anything against public policy in holding the wife to the terms of her bargain or think that it amounted to a licence to the husband to commit adultery. As to the question of the covenant being an interference with the powers of the court, the matter was more difficult. His lordship reviewed the cases cited, and said that in his view the question fell to be decided on the principles enumerated by the Court of Appeal in deciding the case of *Gandy* v. *Gandy*. It was entirely contrary to equitable principles that a wife, after having accepted the benefits of a separation deed, should be allowed to repudiate her obligations under it, whether such repudiation took place because she had obtained a decree for judicial separation or because she had obtained a decree for divorce. In either case she was approbating and reprobating a deed in proceeding against which a court of equity had always set its face. Dealing with the

facts in *Hughes* v. *Hughes*, his lordship said that he thought that the difference in the facts did not warrant any difference in the decision. It was not disputed that the wife was competent to enter into the covenant. The covenant was absolute in its terms, and no condition terminating it ought to be implied. The wife should not be permitted to approbate and reprobate. In his view the covenant was not against public policy and did not constitute an attempt to fetter the discretion of the court. He thought that both appeals should be allowed.

RUSSELL, L.J., delivered a judgment agreeing with that of Lawrence, L.J.

In both cases leave was granted to appeal to the House of Lords.

COUNSEL: (In *Hyman* v. *Hyman*) *Sir Herbert Cunliffe*, K.C., and *H. Durley Grazebrook*, for the appellant; *Sir Walter Schwabe*, K.C., and *Tyndale*, for the respondent. (In *Hughes* v. *Hughes*) *Clifford Mortimer* and *Richard Ellis*, for the appellant; *Sir James O'Connor*, K.C., and *J. W. Morris*, for the respondent.

SOLICITORS: (In *Hyman* v. *Hyman*) *John B. and F. Purchase and Clark; Heywood and Ram.* (In *Hughes* v. *Hughes*) *J. Westcote and Sons; Evelyn Jones and Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law]

# High Court—Chancery Division.

*Re* **Calow; Calow** *v.* **Calow.** Eve, J. 23rd May.

WILL—CONVERSION—SPECIFIC DEVISE—CONTRACT FOR SALE BEFORE WILL—COMPLETION AFTER TESTATOR'S DEATH—WHETHER PASSING UNDER SPECIFIC OR RESIDUARY GIFT.

The testator by his will, dated 10th March, 1925, devised all his property at Dagenham to his two sons Alfred and Herbert as joint tenants, but he directed his trustees to retain the interest therein of his son Herbert, if he succeeded thereto by survivorship, upon trust to sell the same or retain it and to pay the income thereof to his son for life, and after his death to hold the same or the proceeds of sale in trust for his son Alfred. He then devised and bequeathed his real and personal estate to certain other persons, and died in July, 1925. At the date of his death the testator was entitled to an undivided moiety in 37 acres of land at Dagenham, but in 1921 he had entered into a contract to sell 10½ acres thereof to the London County Council, but the purchase was not completed until after his death. This summons raised the question whether the proceeds of sale passed to the specific devisees or formed part of the residuary estate.

EVE, J., said it was admitted that if the 10½ acres sold to the County Council had been the whole of the testator's land at Dagenham it would have passed under the specific devise, but it was argued that as he had a moiety of 27 acres left, it was not a case where the testator must have intended the devise to operate over the proceeds of sale. The rule was laid down in *Weeding* v. *Weeding*, 1861, 1 J. & H. 424, and re-stated in *Re Pyle*, 1895, 1 Ch. 727, that where a testator in a will, made after a contract giving an option to purchase, devised the specific property the subject of the contract, there was an indication of an intention to pass to the devisee whatever interest the testator had at the date of the will. It was said that the rule also applied where the testator devised part of the property, and that seemed to be the result of the decision in *Drant* v. *Vause*, 1 Y. & C.C.C. 580. There was also an indication of intention in the words "proceeds of sale" used in the trust. He held, therefore, that the two sons were entitled to the proceeds of sale.

COUNSEL: *Riviere, Overton, Braund.*

SOLICITORS: *Richard Davies & Son*, for all parties.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

# Societies.

## The Law Society.

We are asked by the Secretary of the Law Society (Mr. E. R. Cook) to state that the following arrangements have been made in connection with the Provincial Meeting this year, to be held at Eastbourne on Tuesday and Wednesday, the 2nd and 3rd October next, viz.:—

Tuesday, the 2nd October.—Visitors will arrive in Eastbourne, and the Mayor of Eastbourne (Councillor Miss Hudson, J.P.) will give a reception at the Floral Hall, Devonshire Park, in the evening.

Wednesday, the 3rd October.—Members will meet at the Town Hall at 10.30 a.m. The President of the Law Society will then deliver his address. This will be followed by the reading and discussion of papers contributed by members of the society. The meeting will adjourn from 1.30 to 2.30 for luncheon, and will close at 4.30. In the evening there will be a banquet at the Grand Hotel. Tickets for the banquet (£1 11s. 6d. each inclusive) can be obtained from the Honorary Secretary of the Eastbourne Law Society on or before the 3rd September.

Thursday, the 4th October.—The meeting will be resumed at 11 a.m., when the reading and discussion of papers will be continued until 1.30, when the meeting will close. For the evening, seats are being reserved for visitors at the Devonshire Park Theatre.

The annual general meeting of the Solicitors' Benevolent Association will be held in the Council-chamber of the Town Hall, on Thursday, 4th October, at 10.15 a.m.

Friday, the 5th October.—There will be excursions to Brighton and Hastings particulars of which will be given in the detailed programme. For the evening a choice may be made of the following entertainments: (1) dinner and dance at the Grand Hotel (tickets 10s. 6d.); (2) dance only at the Grand Hotel; (3) Pier Pavilion to see the Pier Revels; and (4) Pier Theatre.

Members attending the meeting will have free admission during the visit to several clubs and golf links in the neighbourhood.

Each member will be entitled to take a lady to the above entertainments and excursions (except the banquet).

Members proposing to attend the meeting should signify their intention, on or before the 20th August, to Mr. Norman C. Hurst, the Honorary Secretary of the Eastbourne Law Society, at Westminster Bank-chambers, Eastbourne, stating whether they will be accompanied by a lady.

The council will be glad as soon as possible to receive communications from members willing to read papers at the meeting.

Any member who contemplates reading a paper is asked to let the secretary know the subject of it on or before the 12th July. The council will then consider the subjects proposed, and select such as they consider are the most suitable for discussion at the meeting, and will intimate their opinion to members in time to enable them to prepare their papers.

Those members whose papers are not among those selected may, nevertheless, prepare and submit them, and they will be read and discussed should the time at the disposal of the meeting suffice.

Subject to the control of the President of the Law Society, each member attending the meeting will be at liberty to speak and vote upon any matter under discussion, but all resolutions expressive of the opinions of the meeting will be framed in the form of recommendations or requests to the council to take the subjects of such resolution into their consideration.

Hotel accommodation in Eastbourne is in demand, and intending visitors should engage rooms as soon as possible.

Members are particularly requested to notify the Honorary Secretary of the Eastbourne Law Society of their intention to attend the meeting on or before 20th August next, in order that programmes may be sent to them.

*A full report of the whole of the proceedings at the above meeting will appear in the Autumn Special Number of* THE SOLICITORS' JOURNAL, *which will be published in the following week.*

## Gray's Inn.

Thursday, the 14th instant, being the Great Grand Day of Trinity Term at Gray's Inn, the Treasurer (Master R. E. Dummett) and the Masters of the Bench entertained at dinner the following guests:—

His Excellency The Swedish Minister, The Rt. Hon. Viscount Burnham, G.C.M.G., C.H., The Rt. Hon. Lord

Berwick, The Rt. Hon. Lord Riddell, The Rt. Hon. J. Ramsay Macdonald, M.P., The Rt. Hon. Sir Gilbert Parker, Bart., The Hon. Mr. Justice Avory, Sir Edward Chamier, K.C.I.E., The President of the Royal Academy (Sir Frank Dicksee, K.C.V.O.), The President of The Law Society (Sir Cecil A. Coward, LL.D.), Mr. Stuart Bevan, K.C., Mr. H. G. Wells.

The Benchers present, in addition to the Treasurer, were: The Rt. Hon. Sir Plunket Barton, Bart., K.C., Mr. Herbert F. Manisty, K.C., Mr. Edward Clayton, K.C., Mr. Arthur E. Gill, The Rt. Hon, Lord Atkin, Sir Montagu Sharpe, K.C., His Honour Judge Ivor Bowen, K.C., Sir Alexander Wood Renton, K.C.M.G., K.C., Mr. W. Clarke Hall, The Hon. Mr. Justice Walsh, The Rt. Hon. William Watson, K.C., M.P., The Rt. Hon. Sir Hamar Greenwood, Bart., K.C., M.P., The Hon. Vice-Chancellor Courthope Wilson, K.C., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. A. Andrewes Uthwatt, Mr. Malcolm Hilbery, K.C., with the Chaplain (The Rev. W. R. Matthews, D.D.) and the Under-Treasurer (Mr. D. W. Douthwaite).

## Solicitors' Benevolent Association.

The monthly meeting of the board of directors of this Association was held at the Law Society's Hall, Chancery-lane, on the 13th inst., Mr. Charles E. Barry (Bristol) in the chair. The other directors present were Messrs. F. E. F. Barham, A. C. Borlase (Brighton), E. R. Cook, W. F. Cunliffe, T. S. Curtis, H. Fulton (Salisbury), A. G. Gibson, C. G. May, M. A. Tweedie, H. White (Winchester) and A. B. Urmston (Maidstone); £1,395 was distributed in grants of relief, eighty-six new members were admitted, and other general business transacted.

# Rules and Orders.

THE COUNTY COURT (No. 1) RULES, 1928.
DATED 26TH MARCH, 1928.

1. These Rules may be cited as the County Court (No. 1) Rules, 1928, and shall be read and construed with the County Court Rules, 1903,(*a*) as amended.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, as amended. The Appendix referred to in these Rules is the Appendix to the County Court Rules, 1903, as amended.

The County Court Rules, 1903, as amended, shall have effect as further amended by these Rules.

2. In Rule 34A of Order II—

(*a*) In paragraph (ii) the words "has been certified to the Registrar of that Court pursuant to Order XXVIII, Rule 2, give a similar notice to the last-mentioned Registrar" shall be omitted and the following words shall be substituted therefor:—

"has been transmitted to that Court pursuant to Order XXVIII, Rule 2, give a similar notice to the Registrar of that Court";

(*b*) In paragraph (iii) the word "transmitted" shall be substituted for the word "certified";

(*c*) Paragraph (iv) shall be annulled.

3. In Rule 25 of Order XXIIA the words commencing "certify" to the end of the Rule shall be omitted and the following words shall be substituted therefor:—

"transmit to the Registrar of the home Court the amount remaining in Court and shall certify how the same is to be applied; and such money shall be transmitted in accordance with the directions given by the Lord Chancellor as to the transmission of money received by virtue of any warrant against the goods issued from a foreign Court."

4. Rule 2 of Order XXIIB shall be annulled and the following Rule shall be substituted therefor:—

"2.—(1) Where an action is entered or fixed for hearing at a Registrar's Court, the Registrar shall, in the case of an ordinary summons, annex to the plaint note and include in the summons, and in the case of a default or special default summons, annex to the notices of trial, a notice according to the form in the Appendix that the Court will be held before the Registrar only.

(2)—(*a*) Where the claim exceeds £5 and any defendant intends to dispute the claim, or

(*b*) Where the claim does not exceed £5 and—

(i) the plaintiff does not consent to the action being tried by the Registrar in the event of the claim being disputed, or

(ii) any defendant intends to dispute the claim and does not consent to the action being tried by the Registrar, the plaintiff or defendant, as the case may be, shall give notice to the Registrar accordingly within four clear days after the receipt of the notice prescribed by paragraph (1) of this Rule."

5. In paragraph (1) of Rule 3 of Order XXIIB paragraphs (*a*) and (*g*) shall be omitted and the following paragraphs shall be substituted therefor respectively:—

"(*a*) any defendant gives notice under Rule 2 that he intends to dispute the claim; or

"(*g*) any defendant disputes the claim at the hearing."

6. In paragraph (2) of Rule 3 of Order XXIIB paragraphs (*a*) and (*d*) shall be omitted and the following paragraph shall be substituted therefor:—

"(*a*) the claim is disputed and either party does not consent to the action being tried by the Registrar; or"

7. In paragraph (3) of Rule 3 of Order XXIIB the words "notice of his desire in accordance with" shall be omitted and the words "the notice prescribed by" shall be substituted therefor.

8. In Rule 7 of Order XXV after the word "order" there shall be inserted the words—

"and the applicant satisfies the Registrar that such amended description is properly applicable to the person against whom judgment has been obtained."

9. In paragraph (*a*) of Rule 23B of Order XXV the expression "(iii), and (iv)" shall be omitted and the expression "and (iii)" shall be substituted therefor.

10. At the end of paragraph (2) of Rule 26 of Order XXV the following words shall be added:—

"but where the Court in which the judgment or order was obtained is a Metropolitan Court no judgment summons shall issue in respect of that judgment or order out of any other Metropolitan Court."

11. In Rule 2 of Order XXVIII—

(*a*) Paragraph (1) shall be annulled and the following paragraph shall be substituted therefor:—

"(1) Subject to the provisions of Order II, Rules 34A, 35 and 36, where by virtue of any warrant against the goods sent to a foreign district any money has been received or levied by the high bailiff of the foreign Court such high bailiff shall within twenty-four hours from the receipt of such money, unless an interpleader summons as to such money is pending, transmit the same to the high bailiff of the home Court by such means as the Lord Chancellor, with the concurrence of the Treasury, shall direct and with such money shall transmit a return in writing according to the form in the Appendix, and shall also give to the execution creditor notice in writing of such return according to the form in the Appendix and the high bailiff of the home Court shall within twenty-four hours from the receipt of such money and return, deliver both to the Registrar of his Court";

(*b*) In paragraph (3) the words "and such return shall be certified" shall be omitted.

12. Rule 3 of Order XXVIII shall be annulled and the following Rule shall be substituted therefor:—

"3. Where by virtue of any order of commitment to be executed in a foreign district any money has been received by the high bailiff of the foreign Court the provisions of the last preceding Rule regarding the transmission to the home Court of money received under warrants of execution, and the return and notice relating thereto, shall apply to such money received under an order of commitment."

13. In Form 22A in Part I of the Appendix, the paragraph commencing "Take Notice" and ending "time mentioned" shall be omitted and the following paragraphs shall be substituted therefor:—

"(1) Take notice that if you intend to dispute this claim you must give notice to the Registrar of your intention within four clear days after the receipt of this summons. The action will then be tried by the Judge on another day, notice of which will be sent to you. If you give notice of dispute later than four clear days after the receipt of this summons, or if, having failed to give notice, you dispute the claim at the hearing, you may be ordered to pay any costs properly incurred by the plaintiff in consequence of your failure to give notice within the time allowed.

(2) Take notice that if you intend to dispute this claim and do not consent to the action being tried by the Registrar, you must give notice to the Registrar accordingly within four clear days after the receipt of this summons. The action will then be tried by the Judge on another day, notice of which will be sent to you. If you give your notice later than four clear days after the receipt of this summons, or if, having failed to give notice, you dispute the claim at the

(*a*) S.R. & O., Rev., 1904, III, County Court, E., p. 89 (1903, No. 629).

(1) If the claim does not exceed £5, strike out this paragraph.
(2) If the claim exceeds £5, strike out this paragraph.

hearing and do not consent to the action being tried by the Registrar, you may be ordered to pay any costs properly incurred by the plaintiff in consequence of your failure to give notice within the time allowed."

14. Form 46A in Part I of the Appendix shall be annulled and the following forms shall be substituted therefor :—

"46A.

NOTICE TO PLAINTIFF WHERE ACTION ENTERED OR FIXED FOR HEARING AT REGISTRAR'S COURT.

([3]) Take notice that this action has been entered or fixed for hearing at a Court to be held before the Registrar only.

If you do not consent to the action being tried by the Registrar in the event of the claim being disputed, you must give notice to the Registrar accordingly, within four clear days after the receipt of this notice. If you give such notice and the claim is disputed, the action will be tried by the Judge on another day, notice of which will be sent to you. If you do not give such notice and the claim is disputed and you do not consent at the hearing to the action being tried by the Registrar, you may be ordered to pay any costs properly incurred by the defendant in consequence of your failure to give notice within the time allowed.

46B.

NOTICE TO DEFENDANT WHERE ACTION IS FIXED FOR HEARING AT REGISTRAR'S COURT.

Take notice that this action has been fixed for hearing at a Court to be held before the Registrar only.

If you intend to dispute this claim [[4]and do not consent to the action being tried by the Registrar] you must give notice to me accordingly within four clear days after the receipt of this notice. The action will then be tried by the Judge on another day, notice of which will be sent to you. If you give notice later than four clear days after the receipt of this notice, or if, having failed to give notice, you dispute the claim at the hearing [[4] and do not consent to the action being tried by the Registrar], you may be ordered to pay any costs properly incurred by the plaintiff in consequence of your failure to give notice within the time allowed."

15. Form 175 in Part I of the Appendix shall be annulled and the following Form shall be substituted therefor :—

"175.

RETURN AND ADVICE NOTE FROM FOREIGN COURT.

A.B. *v.* C.D.
No. of Plaint.
No. of Warrant.
Home Court at.....

Take notice that the sum of £ : : has been recovered under the above Warrant of Execution/Order of Commitment and a draft for this amount is enclosed herewith.
([5])

Dated this day of 19 .

High Bailiff of the County Court of holden at

To the High Bailiff of the home Court."

16. In Part I of the Appendix, after Form 175, there shall be inserted the following new Form which shall stand as Form 175A.

"175A.

NOTICE OF RETURN AND REMITTANCE FROM FOREIGN COURT.

A.B. *v.* C.D.
No. of Plaint.
No. of Warrant.
Home Court at.....

Take notice that the sum of £ : : has been recovered under the above Warrant of Execution/Order of Commitment and has been transmitted to the home Court.
([6])

Dated this day of 19 .

High Bailiff of the County Court of holden at

To the Judgment Creditor."

17. In the last paragraph of Form 191A in Part I of the Appendix, the words "an order may issue for your imprisonment" shall be omitted and the following words shall be substituted therefor :—

"a warrant may issue without further notice and you may be imprisoned."

(3) If the claim exceeds £5 strike out this paragraph.
(4) Where the claim exceeds £5, strike out the words in brackets.
(5) Here set out any further or other return when the full amount has not been recovered.
(6) Here set out any further or other return when the full amount has not been recovered.


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We, the undersigned persons appointed by the Lord Chancellor pursuant to section one hundred and sixty-four of the County Courts Act, 1888,(*a*) and section twenty-four of the County Courts Act, 1919,(*b*) to frame Rules and Orders for regulating the practice of the Court and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

*W. M. Cann.* *T. Mordaunt Snagge.*
*J. W. McCarthy.* *A. O. Jennings.*
*Hugh Sturges.* *A. H. Coley.*
*S. A. Hill Kelly.*

Approved by the Rules Committee of the Supreme Court.

*Claud Schuster,*
Secretary.

I allow these Rules which shall come into force on the 1st day of July, 1928.

Dated the 26th day of March, 1928.

*Cave, C.*

(*a*) 51–2 V. c. 43. (*b*) 9–10 G. 5. c. 73.

## Legal Notes and News.

### Honours and Appointments.

THE KING has been pleased to confer the honour of Knighthood upon Mr. R. W. E. L. POOLE, B.A. (Lond), Solicitor, of the firm of Messrs. Lewis & Lewis, of 10, 11 & 12 Ely-place, Holborn, E.C.1. Mr. Poole was admitted in 1891.

Major Sir WILLIAM H. PRESCOTT, C.B.E., J.P., M.I.C.E., Barrister-at-Law, formerly M.P. for North Tottenham, and previously for many years Chief Engineer and Surveyor to the Tottenham Urban District Council, has been elected Chairman of the Metropolitan Water Board. Sir William was called to the Bar in 1909.

Mr. J. W. BELSEY, solicitor (Messrs. G. H. Barber & Son, 13, St. Swithin's-lane, E.C.4), has been appointed Master of The Borderer's Company. Mr. Belsey was admitted in 1901.

Mr. T. J. L. STIRLING BOYD, M.A. (Oxon), Barrister-at-law, has been appointed a Judicial Commissioner and a Judge of the Supreme Court of Sarawak. Mr. Boyd was called by the Inner Temple in 1919.

Mr. SAMUEL LITHGOW, Solicitor (Messrs. Lithgow & Pepper), 41 Wimpole-street, has been appointed a Companion of the Most Noble Order of the British Empire (C.B.E.). Mr. Lithgow was admitted in 1882.

Mr. F. R. A. W. CONWAY, Solicitor, Manchester, has been appointed Deputy Town Clerk of Chesterfield in succession to Mr. S. Walker, recently appointed Town Clerk of Keighley. Mr. Conway was admitted in 1927.

Mr. THOMAS B. NOWELL, Solicitor, has been appointed Assistant Solicitor in the office of Mr. Samuel Parker, Town Clerk of Bolton.

## THE DICTAPHONE RECOMMENDED IN THE HOUSE OF COMMONS.

In view of the question raised in the House of Commons by Sir F. Sanderson (U., Darwen) as to whether the Home Secretary would consider the adoption of the Dictaphone at private police enquiries, it will interest our readers to know that many hundreds of solicitors already record all their interviews in this way. In the presence of their clients they dictate to the Dictaphone the decisions arrived at, and thus effectively prevent any possible misunderstanding as to the instructions received and the words actually used.

The Dictaphone is rapidly getting into general use all over the country not only by solicitors, but with town clerks, municipal officers, and both large and small commercial firms. For instance the Metropolitan Vickers Electrical Co. Limited state that sixty Dictaphone-typists in one centralised office deal with the correspondence of 300 executives, and that they thereby bring about a saving of 40 per cent. on that company's salaries alone. This is merely a typical example of hundreds of similar business organisations. Even one-man-solicitor firms are able with The Dictaphone to carry on a voluminous practice while many solicitors with really large practices provide The Dictaphone for each of their partners and managing clerks. In fact, every executive who is sufficiently important to have a telephone for his own use is equipped with The Dictaphone as a matter of course.

The Public Trustees' offices in London and Manchester are extensive users of these wonderful time-saving machines, which is ample indication of their practicability. It is singular that two persons should still be employed over one job when with The Dictaphone one person could do it far more efficiently. Users affirm that The Dictaphone effects an immense saving in the course of a year. Important instructions, appointments, interviews, are never allowed to be overlooked, and the fees, otherwise forgotten, would total up to a sum which in many instances are sufficient to far more than make up for the cost of installing The Dictaphone.

The Hon. Sir William Meigh Goodman, of Clavadel, Pit Farm-road, Guildford, late Chief Justice of Hong-Kong, and formerly Chief Justice of British Honduras, who died on 3rd May, aged eighty-one, left estate of the gross value of £15,838.

# Court Papers.

## Supreme Court of Judicature.

| Date. | ROTA OF REGISTRARS IN ATTENDANCE ON: EMERGENCY ROTA. | APPEAL COURT No. 1. | MR. JUSTICE EVE. | MR. JUSTICE ROMER. |
|---|---|---|---|---|
| M'nd'y June 25 | Mr. More | Mr. Jolly | Mr. Hicks Beach | Mr. Bloxam |
| Tuesday .. 26 | Ritchie | Hicks Beach | *Bloxam | More |
| Wednesday. 27 | Bloxam | Synge | *More | Hicks Beach |
| Thursday . 28 | Jolly | More | *Hicks Beach | Bloxam |
| Friday .... 29 | Hicks Beach | Ritchie | Bloxam | More |
| Saturday .. 30 | Synge | Bloxam | More | Hicks Beach |
| | MR. JUSTICE MAUGHAM. | MR. JUSTICE ASTBURY. | MR. JUSTICE TOMLIN. | MR. JUSTICE CLAUSON. |
| M'n'dy June 25 | Mr.*More | Mr. Ritchie | Mr. Synge | Mr. Jolly |
| Tuesday .. 26 | Hicks Beach | *Synge | Jolly | *Ritchie |
| Wednesday. 27 | *Bloxam | *Jolly | Ritchie | Synge |
| Thursday . 28 | More | *Ritchie | Synge | *Jolly |
| Friday .... 29 | *Hicks Beach | *Synge | Jolly | Ritchie |
| Saturday .. 30 | Bloxam | Jolly | Ritchie | Synge |

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

**VALUATIONS FOR INSURANCE.**—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

# Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 28th June, 1928.

| | MIDDLE PRICE 20th June | INTEREST YIELD. £ s. d. | YIELD WITH REDEMPTION. £ s. d. |
|---|---|---|---|
| **English Government Securities.** | | | |
| Consols 4% 1957 or after | 88⅜ | 4 11 0 | — |
| Consols 2½% | 56 | 4 8 6 | — |
| War Loan 5% 1929-47 | 101⅝ | 4 18 9 | 4 18 9 |
| War Loan 4½% 1925-45 | 97½ | 4 12 6 | 4 16 6 |
| War Loan 4% (Tax free) 1929-42 | 100¾ | 4 0 0 | 4 0 0 |
| Funding 4% Loan 1960-1990 | 90½ | 4 8 0 | 4 11 0 |
| Victory 4% Bonds (available for Estate Duty at par) Average life 35 years | 94¾ | 4 6 0 | 4 7 0 |
| Conversion 4½% Loan 1940-44 | 98 | 4 12 0 | 4 16 0 |
| Conversion 3½% Loan 1961 | 77⅞ | 4 10 0 | — |
| Local Loans 3% Stock 1921 or after | 65 | 4 12 0 | — |
| Bank Stock | 264 | 4 11 0 | — |
| India 4½% 1950-55 | 93 | 4 17 0 | 5 0 0 |
| India 3½% | 71½ | 4 18 0 | — |
| India 3% | 61½ | 4 17 0 | — |
| Sudan 4½% 1939-73 | 97 | 4 13 0 | 4 17 0 |
| Sudan 4% 1974 | 86 | 4 13 0 | 4 17 0 |
| Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years) | 83 | 3 13 0 | 4 6 0 |
| **Colonial Securities.** | | | |
| Canada 3% 1938 | 85 | 3 12 0 | 4 18 0 |
| Cape of Good Hope 4% 1916-36 | 94 | 4 5 0 | 5 0 6 |
| Cape of Good Hope 3½% 1929-49 | 81 | 4 7 0 | 5 0 0 |
| Commonwealth of Australia 5% 1945-75 | 99 | 5 1 0 | 5 2 6 |
| Gold Coast 4½% 1956 | 95 | 4 15 0 | 4 17 6 |
| Jamaica 4½% 1941-71 | 95 | 4 15 0 | 4 18 6 |
| Natal 4% 1937 | 94 | 4 5 0 | 5 0 0 |
| New South Wales 4½% 1935-45 | 90 | 5 0 0 | 5 7 0 |
| New South Wales 5% 1945-65 | 98 | 5 2 0 | 5 3 0 |
| New Zealand 4½% 1945 | 97 | 4 13 0 | 4 17 6 |
| New Zealand 5% 1946 | 103 | 4 17 0 | 4 16 6 |
| Queensland 5% 1940-60 | 99 | 5 1 0 | 5 3 0 |
| South Africa 5% 1945-75 | 102 | 4 18 0 | 5 0 0 |
| South Australia 5% 1945-75 | 97 | 5 2 0 | 5 0 0 |
| Tasmania 5% 1945-75 | 101 | 4 19 0 | 5 0 0 |
| Victoria 5% 1945-75 | 98 | 5 2 0 | 5 0 0 |
| West Australia 5% 1945-75 | 99 | 5 1 0 | 5 2 0 |
| **Corporation Stocks.** | | | |
| Birmingham 3% on or after 1947 or at option of Corporation | 64 | 4 13 0 | — |
| Birmingham 5% 1946–56 | 104 | 4 16 6 | 4 17 7 |
| Cardiff 5% 1945–65 | 102 | 4 18 0 | 4 18 0 |
| Croydon 3% 1940–60 | 71 | 4 5 6 | 5 0 0 |
| Hull 3½% 1925–55 | 78 | 4 10 0 | 5 0 0 |
| Liverpool 3½% Redeemable at option of Corporation | 74 | 4 14 0 | 5 0 0 |
| Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn. | 55 | 4 11 0 | — |
| Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn. | 65 | 4 12 6 | — |
| Manchester 3% on or after 1941 | 65 | 4 12 0 | — |
| Metropolitan Water Board 3% 'A' 1963–2003 | 66 | 4 12 0 | 4 17 0 |
| Metropolitan Water Board 3% 'B' 1934–2003 | 66½ | 4 11 0 | 4 15 6 |
| Middlesex C. C. 3½% 1927–47 | 84 | 4 3 6 | 4 17 0 |
| Newcastle 3½% Irredeemable | 72xd | 4 17 0 | — |
| Nottingham 3% Irredeemable | 64 | 4 15 6 | — |
| Stockton 5% 1946–66 | 103 | 4 17 0 | 4 19 0 |
| Wolverhampton 5% 1946–56 | 103 | 4 17 0 | 5 0 0 |
| **English Railway Prior Charges.** | | | |
| Gt. Western Rly. 4% Debenture | 85 | 4 14 0 | — |
| Gt. Western Rly. 5% Rent Charge | 103 | 4 17 0 | — |
| Gt. Western Rly. 5% Preference | 99 | 5 1 0 | — |
| L. & N. E. Rly. 4% Debenture | 79xd | 5 1 0 | — |
| L. & N. E. Rly. 4% Guaranteed | 76½ | 5 5 0 | — |
| L. & N. E. Rly 4% 1st Preference | 64 | 6 5 0 | — |
| L. Mid. & Scot. Rly. 4% Debenture | 81xd | 4 19 0 | — |
| L. Mid. & Scot. Rly. 4% Guaranteed | 80 | 5 0 0 | — |
| L. Mid. & Scot. Rly. 4% Preference | 76 | 5 5 0 | — |
| Southern Railway 4% Debenture | 80¾xd | 4 19 0 | — |
| Southern Railway 5% Guaranteed | 101 | 4 19 0 | — |
| Southern Railway 5% Preference | 94 | 5 6 0 | — |

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